



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

US EPA RECORDS CENTER REGION 5



479123

URGENT LEGAL MATTER —  
PROMPT REPLY NECESSARY

REPLY TO THE ATTENTION OF:

**NOV 05 2007**

**SR - 6J**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Alex C. Intermill  
Bose McKinney & Evans  
2700 First Indiana Plaza  
135 North Pennsylvania Street  
Indianapolis, IN 46204

Re: Machine Tool Service, Inc. - Special Notice Letter for Elm Street Groundwater  
Contamination Site, Terre Haute, Vigo County, Indiana

Dear Mr. Intermill:

The United States Environmental Protection Agency ("U.S. EPA") has undertaken response actions at the above referenced Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA"). U.S. EPA has documented the release or threatened release of hazardous substances, pollutants, and contaminants at or from the Site. U.S. EPA believes the following response activities are necessary at the Site: 1) a remedial investigation ("RI") to determine the nature and extent of the contamination at the Site; and 2) a feasibility study ("FS") to determine and evaluate alternatives for remedial action at the Site.

This letter follows a general notice letter we issued on April 14, 2005, and a previous special notice letter dated August 26, 2005. In December of 2005, you declined to conduct the RI/FS at the Site, and on February 10, 2006, we terminated negotiations for a consent agreement to complete the RI/FS. On March 7, 2007, U.S. EPA placed the Site on the national priority list (NPL). Enclosed is a copy of the federal register notice documenting the Site listing. This letter notifies you that a second 60 day period of formal negotiations with the U.S. EPA automatically begins with this letter whereby you and other Potentially Responsible Parties ("PRP") are invited to enter into negotiations with U.S. EPA to conduct the RI/FS at the Site. This letter notifies you that a formal demand for reimbursement of costs that have been incurred at this Site by the U.S. EPA in response to the health and environmental concerns at the Site will be forthcoming. This letter also provides general and site-specific information to assist you in these negotiations.



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Robin Lampkin-Isabel  
Senior Group Counsel  
Law Department  
Ashland, Inc.  
P.O. Box 2219  
Columbus, OH 43216

Re: Ashland, Inc. - Special Notice Letter for Elm Street Groundwater Contamination Site,  
Terre Haute, Vigo County, Indiana

Dear Ms. Lampkin-Isabel:

The United States Environmental Protection Agency ("U.S. EPA") has undertaken response actions at the above referenced Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA"). U.S. EPA has documented the release or threatened release of hazardous substances, pollutants, and contaminants at or from the Site. U.S. EPA believes the following response activities are necessary at the Site: 1) a remedial investigation ("RI") to determine the nature and extent of the contamination at the Site; and 2) a feasibility study ("FS") to determine and evaluate alternatives for remedial action at the Site.

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G. Michael Schopmeyer  
Kahn, Dees, Donovan & Kahn, LLP  
501 Main Street, Suite 305  
Evansville, IN 47735-3646

Re: Gurman Container and Supply Corporation - Special Notice Letter for Elm Street  
Groundwater Contamination Site, Terre Haute, Vigo County, Indiana

Dear Mr. Schopmeyer:

The United States Environmental Protection Agency ("U.S. EPA") has undertaken response actions at the above referenced Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA"). U.S. EPA has documented the release or threatened release of hazardous substances, pollutants, and contaminants at or from the Site. U.S. EPA believes the following response activities are necessary at the Site: 1) a remedial investigation ("RI") to determine the nature and extent of the contamination at the Site; and 2) a feasibility study ("FS") to determine and evaluate alternatives for remedial action at the Site.

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CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Lawrence A. McHugh  
600 1<sup>st</sup> Source Bank Center  
100 North Michigan  
South Bend, IN 46601-1632

Re: Consolidated Recycling, Inc. - Special Notice Letter for Elm Street Groundwater  
Contamination Site, Terre Haute, Vigo County, Indiana

Dear Mr. McHugh:

The United States Environmental Protection Agency ("U.S. EPA") has undertaken response actions at the above referenced Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA"). U.S. EPA has documented the release or threatened release of hazardous substances, pollutants, and contaminants at or from the Site. U.S. EPA believes the following response activities are necessary at the Site: 1) a remedial investigation ("RI") to determine the nature and extent of the contamination at the Site; and 2) a feasibility study ("FS") to determine and evaluate alternatives for remedial action at the Site.

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## **NOTICE OF POTENTIAL LIABILITY**

As indicated in the notice letters previously sent regarding this Site, U.S. EPA has information indicating that you may be a PRP under Section 107 of CERCLA, with respect to this Site. Under Section 107 of CERCLA, PRPs include current owners and operators of the Site and former owners and operators of the Site at the time of disposal of hazardous substances, as well as persons who owned or possessed hazardous substances and arranged for disposal, treatment, or transportation of such hazardous substances and persons who accepted hazardous substances for transportation for disposal or treatment to the Site selected by such transporter.

U.S. EPA may perform response actions in response to a release or threatened release of hazardous substances, pollutants or contaminants pursuant to Section 104 of CERCLA. Under Section 107 of CERCLA, U.S. EPA can recover those response costs from responsible parties. Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, as amended (RCRA), and other laws, U.S. EPA can order, or ask a court to order, responsible parties, to conduct response actions at a site. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$25,000 per day, under Section 106(b) of CERCLA, or imposition of treble damages, under Section 107(c)(3) of CERCLA. In addition, responsible parties may be liable for damages to natural resources at a Site.

## **SPECIAL NOTICE AND NEGOTIATION MORATORIUM**

Under Section 122 of CERCLA and general settlement authority, U.S. EPA can enter into settlement agreements with PRPs that require PRPs to conduct response activities. U.S. EPA has determined that use of the Section 122(e) special notice procedures specified in CERCLA may facilitate a settlement between U.S. EPA and PRPs for this Site. Therefore, under Section 122 of CERCLA, this letter triggers a 60-day moratorium on certain U.S. EPA response activities at the Site. During this 60-day period, the PRPs, including you, are invited to participate in formal negotiations with U.S. EPA. You are also encouraged to voluntarily negotiate a settlement providing for the PRPs, including yourself, to conduct or finance the response activities required at the Site. The 60-day negotiation period ends 60 days after your receipt of this letter. The 60-day negotiation moratorium will be extended for an additional 30 days if PRPs provide U.S. EPA with a good faith offer to conduct or finance the RI/FS, on or before the end of the initial 60-day period. If settlement is reached between U.S. EPA and the PRPs, the settlement will be embodied in an administrative order on consent for RI/FS.

## **FUTURE RESPONSE ACTIONS**

U.S. EPA plans to conduct the following CERCLA activities at the Site:

1. Remedial Investigation/Feasibility Study on or about **February 1, 2008**.

## **WORK PLAN AND DRAFT CONSENT ORDER**

A copy of U.S. EPA's draft administrative order on consent ("AOC") and statement of work ("SOW") are attached. This is provided to assist you and other PRPs in developing a good faith offer for conducting the RI/FS.

### **GOOD FAITH OFFER**

As indicated, the 60-day negotiation moratorium triggered by this letter may be extended for 30 days if the PRPs submit a good faith offer to U.S. EPA. An offer to conduct or finance the RI/FS must include a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and must include the following elements:

1. A statement of willingness by the PRPs to conduct or finance the RI/FS which is consistent with U.S. EPA's statement of work and draft administrative order and provides a sufficient basis for further negotiations.
2. A demonstration of the PRPs technical capability to carry out the RI/FS including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s).
3. A demonstration of the PRPs' capability to finance the RI/FS.
4. A statement of willingness by the PRPs to reimburse U.S. EPA for costs incurred in overseeing the PRPs' conduct of the RI/FS.
5. The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

If your offer contemplates modifications to the AOC or SOW, you must make revisions to the enclosed proposed AOC and SOW and submit this version to U.S. EPA prior to the expiration of the 60 day negotiation moratorium. Your response should provide reasons for or the basis of such modifications to the proposed AOC and SOW. Major modifications to the AOC and/or SOW may not be considered a good faith offer by U.S. EPA.

### **DEMAND FOR PAYMENT**

In accordance with CERCLA, U.S. EPA already has undertaken certain actions and incurred certain costs in response to conditions at the Site. Such costs include, but are not limited to, expenditures for investigation, planning, response, oversight, and enforcement activities.

As soon as practicable, U.S. EPA will send Respondent(s) a bill for "past response costs" at the Site. U.S. EPA's bill will include an Itemized Cost Summary. "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its

employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site. The Agency anticipates expending additional funds for response activities at the Site under the authority of CERCLA and other laws. In accordance with Section 107(a) of CERCLA, demand is also hereby made under these authorities for payment of all future costs that U.S. EPA may accrue in regard to the Site.

As indicated above U.S. EPA anticipates expending additional funds for the RI/FS. Whether U.S. EPA funds the entire RI/FS, or simply incurs costs by overseeing the parties conducting these response activities, you are potentially liable for these expenditures plus interest.

### **RESOURCES AND INFORMATION FOR SMALL BUSINESSES**

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at [www.epa.gov](http://www.epa.gov). In addition, the EPA Small Business Ombudsman may be contacted at [www.epa.gov/sbo](http://www.epa.gov/sbo). Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is enclosed with this letter.

### **ABILITY TO PAY - FUTURE FINANCIAL REVIEW**

If your company wishes to settle, but would face a severe financial hardship by remitting the full payment amount, you may request that the U.S. EPA review your financial ability to pay. Under U.S. EPA policy, it is possible in appropriate circumstances for the payment to be made in installments. This may be considered as part of U.S. EPA's financial review. To process a claim of financial hardship, the U.S. EPA will require you to substantiate that claim by submitting detailed financial documentation. A complete description of the U.S. EPA's financial review process is available upon request.

## **ADMINISTRATIVE RECORD**

Pursuant to CERCLA Section 113(k), U.S. EPA must establish an administrative record that contains documents that form the basis of U.S. EPA's decision on the selection of a response action for a site. The administrative record files will be available to the public for inspection and comment at:

**The Superfund Records Center  
77 W. Jackson Blvd.  
Chicago, Illinois**

## **NATURAL RESOURCE TRUSTEE NOTIFICATION**

By a copy of this letter, U.S. EPA is notifying the State of Indiana and the Natural Resources Trustees, in accordance with Section 122(j) of CERCLA, of its intent to enter into negotiations concerning the conduct of an RI/FS at the Site, and is also encouraging them to consider participation in such negotiations.

## **PRP RESPONSE AND U.S. EPA CONTACT PERSON**

Please contact U.S. EPA within 14 days of your receipt of this notice to indicate your willingness to participate in negotiations at this Site. You have 60 calendar days from this notice to provide U.S. EPA with a good faith offer, in writing, demonstrating your willingness to perform the RI/FS. You may respond individually or through a steering committee if such a committee has been formed. If U.S. EPA does not receive a timely response, U.S. EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities. Your response to this notice letter should be sent to:

**Erik Olson  
Associate Regional Counsel, C-14J  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590**

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final U.S. EPA positions on any matter set forth herein.

If you have questions of a technical nature, please contact Howard Caine, Remedial Project Manager at (312) 353-9685. For legal questions contact, Rich Murawski, Associate Regional Counsel, at (312) 886-6721.

Sincerely,



Wendy L. Carney, Chief  
Remedial Response Branch #1

Enclosures:           1. NPL Elm Street Site Listing Federal Register Notice  
                          2. Draft Administrative Order on Consent  
                          3. Draft Statement of Work  
                          4. PRPs List

cc:           Michael Chezik  
              U.S. Department of Interior  
              200 Chestnut Street, Rm 244  
              Philadelphia, PA 19106-2904

Mr. Bruce Palen  
Assistant Commissioner for Office of Environmental Response  
Indiana Department of Environmental Management  
100 North Senate, Room N1225  
Indianapolis, Indiana 46206-6015



*Office of Enforcement and Compliance Assurance*  
**INFORMATION SHEET**

## U.S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and State environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

### EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. Many public libraries provide access to the Internet at minimal or no cost.

EPA's Small Business Home Page (<http://www.epa.gov/sbo>) is a good place to start because it links with many other related websites. Other useful websites include:

*EPA's Home Page*  
<http://www.epa.gov>

*Small Business Assistance Programs*  
<http://www.epa.gov/ttn/sbap>

*Compliance Assistance Home Page*  
<http://www.epa.gov/oeca/oc>

*Office of Site Remediation Enforcement*  
<http://www.epa.gov/oeca/osre>

### Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance on environmental requirements.

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs. Key hotlines include:

**EPA's Small Business Ombudsman**  
(800) 368-5888

**Hazardous Waste/Underground Tanks/  
Superfund**  
(800) 424-9346

**National Response Center**  
(to report oil and hazardous substance spills)  
(800) 424-8802

**Toxics Substances and Asbestos Information**  
(202) 554-1404

**Safe Drinking Water**  
(800) 426-4791

**Stratospheric Ozone and Refrigerants  
Information**  
(800) 296-1996

**Clean Air Technical Center**  
(919) 541-0800

**Wetlands Hotline**  
(800) 832-7828

*Continued on back*





### Compliance Assistance Centers

In partnership with industry, universities, and other federal and state agencies, EPA has established national Compliance Assistance Centers that provide Internet and "faxback" assistance services for several industries with many small businesses. The following Compliance Assistance Centers can be accessed by calling the phone numbers below and at their respective websites:

#### Metal Finishing

(1-800-AT-NMFRC or [www.nmfrc.org](http://www.nmfrc.org))

#### Printing

(1-888-USPNEAC or [www.pneac.org](http://www.pneac.org))

#### Automotive Service and Repair

(1-888-GRN-LINK or [www.ccar-greenlink.org](http://www.ccar-greenlink.org))

#### Agriculture

(1-888-663-2155 or [www.epa.gov/oeca/ag](http://www.epa.gov/oeca/ag))

#### Printed Wiring Board Manufacturing

(1-734-995-4911 or [www.pwbr.org](http://www.pwbr.org))

#### The Chemical Industry

(1-800-672-6048 or [www.chemalliance.org](http://www.chemalliance.org))

#### The Transportation Industry

(1-888-459-0656 or [www.transource.org](http://www.transource.org))

#### The Paints and Coatings Center

(1-800-286-6372 or [www.paintcenter.org](http://www.paintcenter.org))

### State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information. For assistance in reaching state agencies, call EPA's Small Business Ombudsman at (800)-368-5888 or visit the Small Business Environmental Homepage at <http://www.smallbiz-enviroweb.org/state.html>.

### Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations, businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses: The Audit Policy (<http://www.epa.gov/oeca/auditpol.html>) and the Small Business Policy (<http://www.epa.gov/oeca/>

[smbusi.html](http://www.epa.gov/oeca/smbusi.html)). These do not apply if an enforcement action has already been initiated.

### Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an ombudsman ("SBREFA Ombudsman") and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The SBREFA Ombudsman will annually rate each agency's responsiveness to small businesses. If you believe that you fall within the Small Business Administration's definition of a small business (based on your Standard Industrial Code (SIC) designation, number of employees or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

### Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

***EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) or related provisions.***

**Enclosure #1**

**NPL - ELM STREET SITE LISTING FEDERAL REGISTER NOTICE**



# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

[EPA-HQ-SFUND-2006-0755, EPA-HQ-SFUND-2006-0758, EPA-HQ-SFUND-2006-0760, EPA-HQ-SFUND-2006-0761, EPA-HQ-SFUND-2006-0762; FRL-8283-7]

RIN 2050-AD75

## National Priorities List, Final Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds five sites to the General Superfund Section of the NPL.

**EFFECTIVE DATE:** The effective date for this amendment to the NCP is April 6, 2007.

**ADDRESSES:** For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, "Availability of Information to the Public" in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Terry Jeng, phone (703) 603-8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204P); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

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## I. Background

### A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99-499, 100 Stat. 1613 *et seq.*

### B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

### C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section

105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. EPA's role is less extensive than at other sites.

#### *D. How Are Sites Listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutant or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Pursuant to 42 U.S.C 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated

by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

#### *E. What Happens to Sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions \* \* \*." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

#### *F. Does the NPL Define the Boundaries of Sites?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue.

That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a Remedial Investigation/Feasibility Study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are

completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

#### *G. How Are Sites Removed From the NPL?*

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

#### *H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

#### *I. What Is the Construction Completion List (CCL)?*

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup

levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at <http://www.epa.gov/superfund>.

## **II. Availability of Information to the Public**

#### *A. May I Review the Documents Relevant to This Final Rule?*

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through <http://www.regulations.gov> (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

Site name	City/state	FDMS docket ID No.
Elm Street Ground Water Contamination .....	Terre Haute, IN .....	EPA-HQ-SFUND-2006-0755
Sonford Products .....	Flowood, MS .....	EPA-HQ-SFUND-2006-0758
Bandera Road Ground Water Plume .....	Leon Valley, TX .....	EPA-HQ-SFUND-2006-0760
East 67th Street Ground Water Plume .....	Odessa, TX .....	EPA-HQ-SFUND-2006-0761
Lockheed West Seattle .....	Seattle, WA .....	EPA-HQ-SFUND-2006-0762

#### *B. What Documents Are Available for Review at the Headquarters Docket?*

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

#### *C. What Documents Are Available for Review at the Regional Dockets?*

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes EPA's responses to comments.

#### *D. How Do I Access the Documents?*

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for

the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3340, Washington, DC 20004, 202/566-1744.

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114-2023; 617/918-1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007-1866; 212/637-4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814-5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562-8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC-7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353-5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF-RA, Dallas, TX 75202-2733; 214/665-7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551-7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR-B, Denver, CO 80202-1129; 303/312-6463.

Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972-3097.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail

Stop ECL-115, Seattle, WA 98101; 206/553-2782.

#### *E. How May I Obtain a Current List of NPL Sites?*

You may obtain a current list of NPL sites via the Internet at <http://www.epa.gov/superfund/> (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

### **III. Contents of This Final Rule**

#### *A. Additions to the NPL*

This final rule adds the following five sites to the NPL, all to the General Superfund Section:

State	Site name	City/county
IN .....	Elm Street Ground Water Contamination .....	Terre Haute.
MS .....	Sonford Products .....	Flowood.
TX .....	Bandera Road Ground Water Plume .....	Leon Valley.
TX .....	East 67th Street Ground Water Plume .....	Odessa.
WA .....	Lockheed West Seattle .....	Seattle.

#### *B. What Did EPA Do With the Public Comments It Received?*

EPA reviewed all comments received on the sites in this rule and responses to comments are below.

EPA received comments from the Mayor of Leon Valley, Texas on behalf of the City Council. The comment letter included a Leon Valley City Council resolution requesting that the Bandera Road Ground Water Plume be added to the NPL in order to remediate the community's water contamination. For the reasons set forth in the Administrative Record for the site, EPA is adding this site to the NPL.

For the remainder of sites in this rule, EPA received no comments, therefore, EPA is placing them on the NPL at this time. All comments that were received by EPA are contained in the Headquarters Docket and are also listed in EPA's electronic public Docket and comment system at <http://www.regulations.gov>.

### **IV. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review*

##### **1. What Is Executive Order 12866?**

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely

to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

##### **2. Is This Final Rule Subject to Executive Order 12866 Review?**

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### *B. Paperwork Reduction Act*

##### **1. What Is the Paperwork Reduction Act?**

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or

sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

##### **2. Does the Paperwork Reduction Act Apply to This Final Rule?**

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

#### 1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

#### 2. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

### D. Unfunded Mandates Reform Act

#### 1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA,

EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

#### 2. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might

significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding \$100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

### E. Executive Order 13132: Federalism

#### What Is Executive Order 13132 and Is It Applicable to This Final Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

#### 1. What Is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

## 2. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

## G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

### 1. What Is Executive Order 13045?

*Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks"* (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

### 2. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

## H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

### Is This Rule Subject to Executive Order 13211?

This rule is not a "significant energy action" as defined in Executive Order

13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

## I. National Technology Transfer and Advancement Act

### 1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

### 2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

## J. Congressional Review Act

### 1. Has EPA Submitted This Rule to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### 2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of

CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

### 3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington v. EPA*, 86 F.3d 1214, 1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 27, 2007.

**Susan Parker Bodine,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

■ 40 CFR part 300 is amended as follows:

#### PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

#### Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes <sup>(a)</sup>
IN	Elm Street Ground Water Contamination	Terre Haute.	
MS	Sonford Products	Flowood.	
TX	Bandera Road Ground Water Plume	Leon Valley.	
TX	East 67th Street Ground Water Plume	Odessa.	
WA	Lockheed West Seattle	Seattle.	

<sup>(a)</sup> A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be  $\geq 28.50$ ).

C = Sites on Construction Completion list.

S = State top priority (HRS score need not be  $\geq 28.50$ )

P = Sites with partial deletion(s).

[FR Doc. E7–3908 Filed 3–6–07; 8:45 am]

BILLING CODE 6560–50–P

#### GENERAL SERVICES ADMINISTRATION

##### 41 CFR Part 102–35

[FMR Amendment 2007–01; FMR Case 2004–102–1; Docket 2007–001; Sequence 3]

RIN 3090–AH93

#### Federal Management Regulation; FMR Case 2004–102–1, Disposition of Personal Property

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration is amending the Federal

Management Regulation (FMR) by revising coverage on personal property and moving it into subchapter B of the FMR. This final rule adds a new part to subchapter B of the FMR to provide an overview of the property disposal regulation and provide definitions for terms found in the FMR parts.

**DATES:** *Effective Date:* April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Holcombe, Office of Governmentwide Policy, Personal Property Management Policy, at (202) 501–3828, or e-mail at [robert.holcombe@gsa.gov](mailto:robert.holcombe@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FMR Amendment 2007–01, FMR Case 2004–102–1.

#### SUPPLEMENTARY INFORMATION:

#### A. Background

A proposed rule was published in the **Federal Register** on September 12, 2006 (71 FR 53646) soliciting comments on proposed changes to 41 CFR part 102–35. The due date for comments was extended in a **Federal Register** proposed rule document on October 18, 2006 (71 FR 61445). Comments were received from three respondents relating to the sale of personal property. These comments do not directly address any provisions contained in this final rule, and will be held for consideration when the regulation covering the sale of Federal personal property assets, Federal Management Regulation (FMR) part 102–38, is released for comment. FMR part 102–38 is currently being reviewed within GSA for revisions.

This final rule adds a new part, 102–35, to subchapter B of the FMR to provide an overview of the property disposal regulation and to provide

**Enclosure #2**

**ADMINISTRATIVE ORDER ON CONSENT**



# **DRAFT**

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:  
Elm Street Groundwater Contamination Site  
Terre Haute, Indiana**

**Ashland Oil, Inc.,  
Consolidated Recycling, Inc.,  
Gurman Container & Supply Corporation,  
and Machine Tool Service, Inc.,**

**Respondents**

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMEDIAL  
INVESTIGATION/FEASIBILITY STUDY**

**U.S. EPA Region 5  
CERCLA Docket No. \_\_\_\_\_**

**Proceeding Under Sections 104, 107 and  
122 of the Comprehensive Environmental  
Response, Compensation, and Liability Act,  
as amended, 42 U.S.C. §§ 9604, 9607 and  
9622.**

**RI/FS ADMINISTRATIVE ORDER ON CONSENT**

# DRAFT

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## ADMINISTRATIVE ORDER ON CONSENT FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

### I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("U.S. EPA") and Ashland Oil, Inc., Consolidated Recycling, Inc., Gurman Container and Supply, Inc., and Machine Tool Service, Inc., ("Respondents"). The Settlement Agreement concerns the preparation and performance of a remedial investigation and feasibility study ("RI/FS") at the Elm Street Groundwater Contamination Site, located near the intersection of Elm Street and U.S. Highway 41 in Terre Haute, Indiana. ("Site"), and the reimbursement for future response costs incurred by U.S. EPA in connection with the RI/FS as well as past response costs.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of U.S. EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by U.S. EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator, U.S. EPA, Region 5 to the Director, Superfund Division, U.S. EPA, Region 5 by U.S. EPA Delegation Nos. 14-14-C and 14-14-D on May 2, 1996.

3. In accordance with Section 104(b)(2) and Section 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), U.S. EPA notified the United States Department of the Interior on \_\_\_\_\_, 2007, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship. In accordance with Section 121(f)(1)(F), U.S. EPA has notified the State of Indiana (the "State") on \_\_\_\_\_, 2007 of negotiations with potentially responsible parties regarding the implementation of the remedial investigation and feasibility study for the Site.

4. U.S. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law and determinations in Sections V and VI of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

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## **II. PARTIES BOUND**

5. This Settlement Agreement applies to and is binding upon U.S. EPA and upon Respondents and their agents, successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

8. Each undersigned representative of Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the Respondents to this Settlement Agreement.

## **III. STATEMENT OF PURPOSE**

9. In entering into this Settlement Agreement, the objectives of U.S. EPA and Respondents are: (a) to determine the nature and extent of contamination and any current or potential threat to the public health, welfare, or the environment posed by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site and to collect sufficient data for developing and evaluating effective remedial alternatives by conducting a Remedial Investigation ("RI") as more specifically set forth in the Statement of Work ("SOW") attached as Attachment A to this Settlement Agreement; (b) to identify and evaluate remedial alternatives that protect human health and the environment by preventing, eliminating, reducing or controlling any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a Feasibility Study ("FS") as more specifically set forth in the Statement of Work ("SOW") in Attachment A to this Settlement Agreement; and (c) to recover response and oversight costs incurred by U.S. EPA with respect to this Settlement Agreement including past response costs.

10. The Work conducted under this Settlement Agreement is subject to approval by U.S. EPA and shall provide all appropriate and necessary information to assess site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondents shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP and all applicable U.S. EPA guidances, policies, and procedures.

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## IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "ARARs" mean all applicable local, state, and federal laws and regulations, and all "applicable requirements" or "relevant and appropriate requirements" as defined at 40 C.F.R. § 300.5 and 42 U.S.C. § 9261(d).

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXIX.

e. "EPA" or "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "IDEM" shall mean the Indiana Department of Environmental Management and any successor departments or agencies of the State.

g. "Engineering Controls" shall mean constructed containment barriers or systems that control one of the following: downward migration, infiltration or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

h. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, technical memoranda and other items pursuant to this Settlement Agreement, conducting community relations, providing technical assistance grants to community groups (if any), verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs (including fees), travel costs, laboratory costs, ATSDR costs, the costs incurred pursuant to Paragraph 57 and 59 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation) and Paragraph 43 (emergency response). Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Respondents have agreed to reimburse under this Settlement Agreement that has accrued pursuant to 42

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U.S.C. § 9607(a) during the period from June 30, 2005 to the Effective Date of this Settlement Agreement.

i. "Institutional controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and restrictive covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

j. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. "Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between June 30, 2005 and the Effective Date, or (b) incurred prior to the Effective Date, but paid after that date.

l. "NCP" or "National Contingency Plan" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

m. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, the SOW, all appendices attached hereto (listed in Section XXVII) and all documents incorporated by reference into this document including without limitation U.S. EPA-approved submissions. U.S. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by U.S. EPA. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

n. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral. References to paragraphs in the SOW will be so identified; for example as "SOW paragraph 15".

o. "Parties" shall mean U.S. EPA and Respondents.

p. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through June 30, 2005, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

q. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.*

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- r. "Respondents" shall mean Ashland Oil, Inc., Consolidated Recycling, Inc., Gurman Container and Supply, Inc., and Machine Tool Service, Inc.
- s. "RI/FS Planning Documents shall mean the Work Plan/Field Sampling Plan, Quality Assurance Project Plan and Health and Safety Plan.
- t. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral. References to sections in the SOW will be so identified; for example as "SOW Section V."
- u. "Site" shall mean the Elm Street Groundwater Contamination Superfund Site, located near the intersection of Elm Street and U.S. Highway 41, comprised of three separate industrial parcels with physical addresses of 118 Elm Street (Ashland property), 800 N. 3<sup>rd</sup> Street (Gurman property), and 117 Elm Street (Machine Tool Service property) in Terre Haute, Vigo County, Indiana, and nearby areas where hazardous substances, pollutants or contaminants have or may have come to be located from any of these three parcels or from former operations at any of these three parcels.
- v. "State" shall mean the State of Indiana.
- w. "Statement of Work" or "SOW" shall mean the Statement of Work for development of a RI/FS for the Site, as set forth in Appendix A to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.
- x. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under Section 13-11-2-96 of the Indiana Code.
- y. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement, except those required by Section XIV (Retention of Records).

## V. FINDINGS OF FACT

12. Site Description. The Elm Street Groundwater Contamination Site is located near the intersection of Elm Street and U.S. Highway 41 in Terre Haute, Indiana. The site is located near the Wabash River in Central Terre Haute, directly east of the Indiana American Water Company (IAWC), a commercial municipal water company which supplies drinking water to over 60,000 customers in Terre Haute. The site is bounded to the north by multi-family housing and a park, to the east by commercial and residential areas, and to the south and west by industrial areas. The site consists of three separate properties, each of which was formerly characterized as a separate superfund site. These sites were known formerly as the Bi-State Products site, the I. Gurman & Sons site, and the Machine Tool Services, Inc. sites. The Indiana

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Department of Environmental Management (IDEM) conducted Expanded Site Inspections (ESIs) for all three of the former sites in 1999.

a. The former Bi-State Products site, with a street address of 118 Elm Street, is comprised of two tax parcels. The improvements on this property include a small office building, a larger warehouse and garage structure, a pumping and unloading apparatus and a storage tank farm. The facility was operated as a used oil collection and storage facility from 1982 until 1999 and is currently not in use.

b. The former I. Gurman & Sons site, with a street address of 800 North Third Street, is comprised of three tax parcels totaling approximately two acres. Currently the property houses the Gurman Container & Supply Corporation business operations, which include the reconditioning of used steel and plastic barrels and the sale of new and used containers. The improvements on this property include a warehouse and office building, a container reconditioning building, a drum storage area and a parking lot.

c. The former Machine Tool Service site, with a street address of 117 Elm Street, is comprised of seven adjacent tax parcels taking up the majority of a city block, approximately four and one half acres in size. Currently the property houses the Machine Tool Services Inc. business operations. The company has operated a machine tool and equipment repair facility at the site since 1967. Improvements on the property include the 15,000 square foot building housing Machine Tool Service, Inc. operations and a small warehouse on the east side of the property.

13. The geology of the site is characterized by sandy soils with rapid permeability and low water holding capacity. Sand and gravel deposits, approximately 130 feet deep under the site, are underlain by shale bedrock. The sand and gravel layer creates a surficial aquifer capable of transmitting large quantities of water. Recharge of the aquifer is primarily from local precipitation. The characteristics make the aquifer extremely susceptible to ground surface contaminants. Groundwater flow in the aquifer moves generally in a west-southwesterly direction towards the Wabash river.

## 14. Site History.

a. The Bi-State property was historically (mid 1930s - early 1980s) used as a local petroleum bulk plant. From 1982-1998 the property was used as a collection and storage site for used industrial and automotive crankcase petroleum oils. From 1982 to 1990 the property was owned by Machine Tool Service, Inc. and leased by Bi-State Products, Inc., the company that at that time ran the used oil collection facility. Valvoline, Inc. purchased the property as part of the purchase of the Bi-State business in 1990. In 1992 Valvoline, Inc. deeded the property to Ecogard, Inc., a wholly owned subsidiary of Valvoline, Inc. In 1999, Ecogard, Inc. conveyed the property to Ashland, Inc., the successor to Valvoline in a merger.

b. The Gurman property has been the site of a barrel reconditioning business since the 1940s. The property has been in the Gurman family since 1947. In 1991 Isadore and



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Anne W. Gurman deeded the property to I. Gurman & Sons, Inc. In 1995 I. Gurman & Sons, Inc. changed its name to Gurman Container and Supply Corporation.

c. Historically the MTS property housed both a bulk plant for petroleum products and a railway locomotive service facility on the east side of the property. MTS purchased the majority (5 of 7 tax parcels) of the property in 1975 from a Patricia Hoffman. MTS received 2 additional parcels by quit claim in 1979 and 1981 from the Penn Central Corporation.

15. In 1987 the Indiana American Water Company of Terre Haute (IAWC) notified the Indiana Department of Environmental Management that IAWC had discovered volatile organic compounds (VOCs), including PCE and TCE, in its wells approximately 500 feet downgradient of the site. IDEM's Site Investigation Section performed preliminary soil sampling at the site in 1988 that showed the presence of VOCs matching those found in IAWC's wells. From 1999 - 2003, IDEM performed an Expanded Site Inspection (ESI) involving the installation of monitoring wells and the taking of soil borings throughout the site.

16. By memorandum dated March 24, 2005, U.S. EPA consolidated the three formerly separate sites into the Elm Street Groundwater Contamination site for the following reasons: 1) the likelihood that the contamination in the groundwater emanates from all three sites and is indivisible; 2) the likelihood that the U.S. EPA will ultimately select a response action that addresses the regional nature of the groundwater problem, and 3) from an administrative standpoint, much of the work to be performed by U.S. EPA personnel will relate to all three sites.

17. Site Contamination. All three property histories included potential spill or leak sources for VOCs. IDEM chose the soil boring and monitoring well locations for the ESI based on those potential sources and results of the 1988 site investigation samples. The results of the ESI identified potential sources of the contamination in the IAWC wells on all three properties. Site contamination includes, but is not limited to, the constituents identified below. Sample evidence from the site indicates releases and contaminant migration pathways at the Site as documented by sample data. The following description of site contamination, however, is not inclusive of all the current data, and additional releases may be discovered during the site investigation.

a. During the ESI, IDEM placed the soil borings at the Bi-State property near the locations of previously removed underground storage tanks and in the area where the transfer from trucks to tanks of used oil occurred. IDEM chose monitoring well locations both upgradient and downgradient of these locations to identify contribution of the property to groundwater contamination. Monitoring well data showed increasing concentrations of TCA and TCE within the Bi-State property, with two downgradient wells testing at 2.5 and 1.4 ppb TCE respectively. Those same wells both tested 2.1 ppb of 1,1,1 TCA. One downgradient well tested at 11.0 ppb 1,1 DCA. Soil bore test results revealed the presence of PCE at 27 ppb in the near sub-surface suggesting migration from a release at or near the surface.

b. IDEM placed the soil borings at the Gurman property near the reconditioning and barrel storage areas. IDEM chose monitoring well locations both upgradient and

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downgradient of the property to identify contribution of the property to groundwater contamination. Soil boring samples revealed PCE and TCE present near the surface suggesting migration from a release at or near the surface. One soil bore near the container reconditioning area showed levels of PCE at 85 ppb and of TCE at 12 ppb. The monitoring wells identified the presence of PCE, TCE, and 1,1,1-TCA downgradient of the property. Two downgradient wells showed concentrations of 7.2 and 22.0 ppb PCE respectively, of 5.9 and 25.0 ppb TCE respectively, and of 4.1 and 10.0 ppb 1,1,1-TCA, respectively.

c. IDEM placed the soil borings at the MTS property in the area where above ground solvent tanks were located and near the former petroleum bulk plant. IDEM chose monitoring well locations both upgradient and downgradient of these locations to identify contribution of the property to groundwater contamination. Soil samples on the MTS property showed no detectable levels of VOC contaminants, but downgradient monitoring well test results did suggest an increase in contamination occurring on the property. Two downgradient wells measured concentrations of 220 ppb and 600 ppb 1,1,1-TCA respectively.

18. Identification of the populations at risk; both human and non-human. The primary risk from the contamination present at the site is the migration of its constituents into the groundwater and the nearby IAWC municipal drinking water wells. There are no significant water withdrawal facilities from the Wabash river within fifteen miles of the site.

19. Health effects of contaminants. The VOCs found in the wells and on the site have been linked with a number of human health issues, including liver, nervous system, and circulatory problems and an increased risk of cancer.

20. Respondents include:

- a. Ashland, Inc., current owner of the Bi-State property.
- b. Consolidated Recycling, Inc., previous operator of the used oil collection and storage facility at the Bi-State property.
- c. Gurman Container & Supply Corporation, current owner and operator of the barrel reconditioning facility on the Gurman property.
- d. Machine Tool Service, Inc., current owner and operator of the machine tool and equipment repair facility on the MTS property.

21. The site was placed on the National Priorities List (NPL) on March 7, 2007.

22. EPA has not taken previous enforcement actions at the Site.

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## VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record in this matter, U.S. EPA has determined that:

23. The Elm Street Groundwater Contamination Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitutes "any pollutant or contaminant" that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA.

25. The conditions described in the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

26. Each Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

27. Respondents are responsible parties under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622.

a. Each Respondent is either a person who generated the hazardous substances found at the Site, a person who at the time of disposal of any hazardous substances owned or operated the Site, or a person who arranged for disposal or transport for disposal of hazardous substances at the Site. Each Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

b. Respondents Ashland Inc., Gurman Container & Supply Corporation, and Machine Tool Service, Inc. are all "owner(s)" and/or "operator(s)" of a facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

c. Respondent Consolidated Recycling, Inc. was the "owner" and/or "operator" of a facility at the time of release of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

28. The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

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29. U.S. EPA has determined that Respondents are qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondents comply with the terms of this Settlement Agreement.

## VII. SETTLEMENT AGREEMENT AND ORDER

30. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

## VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

### 31. Selection of Contractors, Personnel.

a. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within 30 days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondents shall notify U.S. EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA. The qualifications of the persons undertaking the Work for Respondents shall be subject to U.S. EPA's review, for verification that such persons meet minimum technical background and experience requirements. If Respondents fail to demonstrate to U.S. EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Settlement Agreement, U.S. EPA may take over the work required by this Settlement Agreement.

b. If U.S. EPA disapproves in writing of any person(s)' technical qualifications, Respondents shall notify U.S. EPA of the identity and qualifications of the replacement(s) within 14 days of the written notice. If U.S. EPA subsequently disapproves of the replacement(s), U.S. EPA reserves the right to terminate this Settlement Agreement and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondents. During the course of the RI/FS, Respondents shall notify U.S. EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. U.S. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

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32. Within 30 days of the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to U.S. EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. U.S. EPA retains the right to disapprove of the designated Project Coordinator. If U.S. EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number and qualifications within 14 days following U.S. EPA's disapproval. Respondents shall have the right to change their Project Coordinator subject to U.S. EPA's right to disapprove. Respondents shall notify U.S. EPA 14 days before such change is made. The initial notification may be made orally, but shall be promptly followed by a written notification.

33. U.S. EPA has designated Howard Caine of the Superfund Division, Region 5 as its Project Coordinator. U.S. EPA will notify Respondents of a change in its designation of the Remedial Project Manager. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to:

Howard Caine  
Remedial Project Manager  
U.S. EPA Region 5, Superfund Division  
Mail Code SR-6J  
77 West Jackson  
Chicago, Illinois 60604-3590

Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies. Respondents shall make submissions electronically according to U.S. EPA Region 5 specifications. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by Respondents. Documents to be submitted to the Respondents shall be sent to:

[Name]  
Organization  
Address

34. U.S. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, U.S. EPA's Project Coordinator shall have the authority consistent with the NCP to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the U.S. EPA Project Coordinator from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

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35. U.S. EPA and Respondents shall have the right, subject to Paragraph 32, to change their respective Project Coordinator. Respondents shall notify U.S. EPA 14 days before such a change is made. The initial notification by either party may be made orally, but shall be promptly followed by a written notice.

36. U.S. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of U.S. EPA, but not to modify the RI/FS Planning Documents or other work plans.

## IX. WORK TO BE PERFORMED

37. a. Respondents shall conduct the RI/FS in accordance with the provisions of this Settlement Agreement, the SOW, CERCLA, the NCP, U.S. EPA guidance related to remedial investigations and feasibility studies including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05), Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part A), Interim Final (EPA-540-1-89-002), OSWER Directive 9285.7-01A, December 1, 1989; and Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments), Interim, (EPA 540-R-97-033), OSWER Directive 9285.7-01D, January 1998, any guidances referenced in the SOW, and any RI/FS related guidance subsequently issued by U.S. EPA.

b. In the RI and FS Reports, Respondents shall address the factors required to be taken into account in Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430 of the NCP, 40 C.F.R. § 300.430. The RI shall characterize the geology and hydrogeology of the Site, determine the nature and extent of hazardous substances, pollutants or contaminants at or from the Site, and characterize all ecological zones including terrestrial, riparian, wetlands, aquatic/marine, and transitional. Respondents shall prepare, for inclusion with the RI Report, a determination of the nature and extent of the current and potential threat to the public health or welfare or the environment posed by the release or threatened release of any hazardous substances, pollutants, or contaminants at or from the Site, including a "Baseline Human Health Risk Assessment" and "Baseline Ecological Risk Assessment". In the FS Report, Respondents shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action that protect human health and the environment by recycling waste or by eliminating, reducing and/or controlling risks posed through each pathway at the Site. In the FS Report, the Respondents shall evaluate a range of alternatives including, but not limited to, those alternatives described in 40 C.F.R. § 300.430(e) and remedial alternatives that utilize permanent solutions and alternative treatment technologies or resource recovery technologies. The FS Reports shall include a detailed analysis of individual alternatives against each of the nine evaluation criteria in 40 C.F.R. § 300.430(e)(9)(iii) and a comparative analysis that focuses upon the relative performance of each alternative against the nine criteria in 40 C.F.R. § 300.430(e)(9)(iii). Respondents shall submit to U.S. EPA three copies of all plans, reports,

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submittals and other deliverables required under this Settlement Agreement, the SOW and the RI/FS Planning Documents in accordance with the approved schedule for review and approval pursuant to Section X (U.S. EPA Approval of Plans and Other Submissions). Upon request by U.S. EPA, Respondents shall submit in electronic form all portions of RI and FS Reports, any report or other deliverable Respondents are required to submit pursuant to provisions of this Settlement Agreement, including the SOW. Upon approval by U.S. EPA, all deliverables under this Settlement Agreement, including the SOW, shall be incorporated into and become enforceable under this Settlement Agreement.

38. Community Involvement Plan. U.S. EPA will prepare a Community Involvement Plan, in accordance with U.S. EPA guidance and the NCP. As requested by U.S. EPA, Respondents shall provide information supporting U.S. EPA's community relations programs.

39. Modification of any plans.

a. If at any time during the RI/FS process, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to the U.S. EPA Project Coordinator within 14 days of identification. U.S. EPA in its discretion will determine whether the additional data will be collected by Respondents and whether it will be incorporated into reports and deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondents shall notify the U.S. EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that U.S. EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the RI/FS Planning Documents, U.S. EPA shall modify or amend the RI/FS Planning Documents in writing accordingly. Respondents shall perform the RI/FS Planning Documents as modified or amended.

c. U.S. EPA may determine that in addition to tasks defined in the initially approved RI/FS Planning Documents, other additional Work may be necessary to accomplish the objectives of the RI/FS as set forth in the SOW for this RI/FS. U.S. EPA may require that Respondents perform these response actions in addition to those required by the initially approved RI/FS Planning Documents, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS.

d. Respondents shall confirm their willingness to perform the additional Work in writing to U.S. EPA within 7 days of receipt of the U.S. EPA request. If Respondents object to any modification determined by U.S. EPA to be necessary pursuant to this Paragraph, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution). The SOW and/or RI/FS Planning Documents shall be modified in accordance with the final resolution of the dispute.

e. Respondents shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by U.S. EPA in a written modification to the

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RI/FS Planning Documents or written work plan supplement. U.S. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit U.S. EPA's authority to require performance of further response actions as otherwise provided in this Settlement Agreement.

## 40. Off-Site Shipment of Waste Material.

a. Respondents shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to U.S. EPA's Designated Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

b. Respondents shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

c. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the remedial investigation and feasibility study. Respondents shall provide the information required by Subparagraph 40.b and 40.d as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

d. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

41. Meetings. Respondents shall make presentations at, and participate in, meetings at the request of U.S. EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at U.S. EPA's discretion.



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42. Progress Reports. In addition to the deliverables set forth in this Settlement Agreement, Respondents shall provide to U.S. EPA monthly progress reports by the 10th day of the following month. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Settlement Agreement during that month, (2) include hard copies and electronic copies (according to U.S. EPA Region 5 specifications) of all results of sampling and tests and all other data received by the Respondents (3) describe Work planned for the next two months with schedules relating such Work to the overall project schedule for RI/FS completion, and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

43. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the U.S. EPA Project Coordinator or, in the event of his/her unavailability, the On Scene Coordinator ("OSC") or the Regional Duty Officer, U.S. EPA Region 5 Emergency Planning and Response Branch at (Tel: (312) 353-2318) of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondents shall reimburse U.S. EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the U.S. EPA Project Coordinator, the OSC or Regional Duty Officer at (312) 353-2318 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to U.S. EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

## X. U.S. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

44. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement, including the SOW, U.S. EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, U.S. EPA shall not modify a submission without first providing

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Respondents at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

45. In the event of approval, approval upon conditions, or modification by U.S. EPA, pursuant to Subparagraph 44 (a), (b), (c) or (e), Respondents shall proceed to take any action required by the plan, report or other item, as approved or modified by U.S. EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by U.S. EPA. Following U.S. EPA approval or modification of a submittal or portion thereof, Respondents shall not thereafter alter or amend such submittal or portion thereof unless directed by U.S. EPA. In the event that U.S. EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 44(c) and the submission had a material defect, U.S. EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties). U.S. EPA also retains the right to perform its own studies, complete the RI/FS (or any portion of the RI/FS), and seek reimbursement from Respondents for its costs; and/or seek any other appropriate relief.

## 46. Resubmission of Plans.

a. Upon receipt of a notice of disapproval, Respondents shall, within 14 days or such longer time as specified by U.S. EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 47 and 48.

b. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the submission unless otherwise directed by U.S. EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondents shall not proceed further with any subsequent activities or tasks until receiving U.S. EPA approval for the following deliverables: RI/FS Work Plan/Field Sampling Plan, Quality Assurance Project Plan, Draft Remedial Investigation Report, Treatability Testing Work Plan and Sampling and Analysis Plan, and Draft Feasibility Study Report. While awaiting U.S. EPA approval on these deliverables, Respondents shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Settlement Agreement.

d. For all remaining deliverables not enumerated above in subparagraph 46.c., Respondents shall proceed with all subsequent tasks, activities and deliverables without awaiting U.S. EPA approval on the submitted deliverable. U.S. EPA reserves the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

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47. If U.S. EPA disapproves a resubmitted plan, report or other item, or portion thereof, U.S. EPA may direct Respondents to correct the deficiencies. U.S. EPA also retains the right to modify or develop the plan, report or other item. Respondents shall implement any such plan, report, or item as corrected, modified or developed by U.S. EPA, subject only to their right to invoke the procedures set forth in Section XV (Dispute Resolution).

48. If upon resubmission, a plan, report, or item is disapproved or modified by U.S. EPA due to a material defect, Respondents shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Respondents invoke the dispute resolution procedures in accordance with Section XV (Dispute Resolution) and U.S. EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by U.S. EPA or superceded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If U.S. EPA's disapproval or modification is not otherwise revoked, substantially modified or superceded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

49. In the event that U.S. EPA takes over some of the tasks, but not the preparation of the RI Report or the FS Report, Respondents shall incorporate and integrate information supplied by U.S. EPA into the final reports.

50. All plans, reports, and other items submitted to U.S. EPA under this Settlement Agreement shall, upon approval or modification by U.S. EPA, be incorporated into and enforceable under this Settlement Agreement. In the event U.S. EPA approves or modifies a portion of a plan, report, or other item submitted to U.S. EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

51. Neither failure of U.S. EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by U.S. EPA. Whether or not U.S. EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to U.S. EPA.

## **XI. QUALITY ASSURANCE, SAMPLING AND DATA AVAILABILITY**

52. Quality Assurance. Respondents shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the SOW, the QAPP and guidances identified therein. Respondents will assure that field personnel used by Respondents are properly trained in the use of field equipment and in chain of custody procedures. Respondents shall only use laboratories which have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by U.S. EPA.

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## 53. Sampling.

a. All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalf, during the period that this Settlement Agreement is effective, shall be submitted to U.S. EPA (in paper and electronic form according to U.S. EPA Region 5 specifications) in the next monthly progress report as described in Paragraph 42 of this Settlement Agreement. U.S. EPA will make available to Respondents validated data generated by U.S. EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondents shall verbally notify U.S. EPA at least 14 days prior to conducting significant field events as described in the SOW and RI/FS Work Plan/Field Sampling Plan. At U.S. EPA's verbal or written request, or the request of U.S. EPA's oversight assistant, Respondents shall allow split or duplicate samples to be taken by U.S. EPA (and its authorized representatives) any samples collected by Respondents in implementing this Settlement Agreement. All split samples of Respondents shall be analyzed by the methods identified in the QAPP.

## 54. Data Availability.

a. At all reasonable times, U.S. EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-site areas where Work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and its contractor pursuant to this Settlement Agreement; reviewing the progress of Respondents in carrying out the terms of this Settlement Agreement; conducting tests as U.S. EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to U.S. EPA by Respondents. Respondents shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to Work undertaken in carrying out this Settlement Agreement. Nothing herein shall be interpreted as limiting or affecting U.S. EPA's right of entry or inspection authority under federal law. All persons accessing the Site under this paragraph shall comply with all approved Health and Safety Plans.

b. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA. 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to U.S. EPA [and the State], or if U.S. EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents. Respondents agree not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring. Respondents shall segregate and clearly

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identify all documents or information submitted under this Settlement Agreement for which Respondents assert business confidentiality claims.

55. In entering into this Settlement Agreement, Respondents waive any objections to any data gathered, generated, or evaluated by U.S. EPA, the state or Respondents in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Settlement Agreement or any U.S. EPA-approved Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the RI/FS, Respondents shall submit to U.S. EPA a report that specifically identifies and explains their objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to U.S. EPA within 15 days of the monthly progress report containing the data.

## **XII. SITE ACCESS AND INSTITUTIONAL CONTROLS**

56. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of Respondents, such Respondents shall, commencing on the Effective Date, provide U.S. EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

57. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by the U.S. EPA Project Coordinator. Respondents shall immediately notify U.S. EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs).

58. Notwithstanding any provision of this Settlement Agreement, U.S. EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

59. If Respondents cannot obtain access agreements, U.S. EPA may obtain access for Respondents, perform those tasks or activities with U.S. EPA contractors, or terminate the Settlement Agreement. In the event that U.S. EPA performs those tasks or activities with U.S. EPA contractors and does not terminate the Settlement Agreement, Respondents shall perform all other activities not requiring access to that property, and shall reimburse U.S. EPA for all costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by U.S. EPA into its reports and deliverables.

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## **XIII. COMPLIANCE WITH OTHER LAWS**

60. Respondents shall comply with all applicable local, state and federal laws and regulations when performing the RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-site and requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## **XIV. RETENTION OF RECORDS**

61. During the pendency of this Settlement Agreement and for a minimum of 10 years after commencement of construction of any remedial action, each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of construction of any remedial action, Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

62. At the conclusion of this document retention period, Respondents shall notify U.S. EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA, Respondents shall deliver any such records or documents to U.S. EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

63. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by U.S. EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

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## **XV. DISPUTE RESOLUTION**

64. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

65. If Respondents object to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify U.S. EPA in writing of their objection(s) within 14 days of such action, unless the objection(s) has/have been resolved informally. U.S. EPA and Respondents shall have 21 days from U.S. EPA's receipt of Respondents' written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of U.S. EPA. Such extension may be granted verbally but must be confirmed in writing to be effective.

66. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an U.S. EPA management official at the Superfund Branch Chief level or higher will issue a written decision. U.S. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs. Respondents shall proceed in accordance with U.S. EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If Respondents do not agree to perform or do not actually perform the Work in accordance with U.S. EPA's final decision, U.S. EPA reserves the right in its sole discretion to conduct the Work itself, to seek reimbursement from Respondents, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

## **XVI. STIPULATED PENALTIES**

67. Respondents shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 68 and 69 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVII (Force Majeure). "Compliance" by Respondents shall include completion of the Work under this Settlement Agreement or any activities contemplated under any of the RI/FS Planning Documents, work plans or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by U.S. EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

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## 68. Stipulated Penalty Amounts - Work.

The following stipulated penalties shall accrue per day for any noncompliance associated with completion of the field investigation in accordance with the approved Work Plan.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,000	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 4,000	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 8,000	31 <sup>st</sup> day and beyond

## 69. Stipulated Penalty Amounts - RI/FS Planning Documents, Reports and Technical Memoranda.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports listed below:

- i. An original and any revised work plan.
- ii. An original and any revised sampling and analysis plan.
- iii. An original and any revised remedial investigation report.
- iv. An original and any revised treatability testing work plan.
- v. An original and any revised treatability study sampling and analysis plan.
- vi. An original and any revised feasibility study report.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 3,000	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 6,000	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 10,000	31 <sup>st</sup> day and beyond

b. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate interim deliverables listed below, or other written documents not specifically mentioned in this paragraph:

- i. Technical memorandum on modeling of site characteristics.
- ii. Preliminary site characterization summary.
- iii. Summary of RI data.
- iv. Identification of candidate technologies memorandum.
- v. Treatability testing statement of work.
- vi. Treatability study evaluation report.
- vii. Memorandum on remedial action objectives.
- viii. Memorandums on development and preliminary screening of alternatives, assembled alternatives screening results, and final screening.
- ix. Comparative analysis report.



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<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,000	1st through 14th day
\$ 4,000	15th through 30th day
\$ 8,000	31st day and beyond

c. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate monthly progress reports:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1,500	15th through 30th day
\$ 3,000	31st day and beyond

70. Respondents shall be liable for stipulated penalties in the amount of \$50 per day for the first week or part thereof and \$200 per day for each week or part thereof thereafter for failure to meet any other obligation under this Settlement Agreement including the SOW.

71. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (U.S. EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondents of any deficiency; and (2) with respect to a decision by the U.S. EPA Management Official at the Superfund Branch Chief level or higher, under Paragraph 66 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the U.S. EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

72. Following U.S. EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Respondents written notification of the same and describe the noncompliance. U.S. EPA may send Respondents a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified Respondents of a violation.

73. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondents' receipt from U.S. EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures in accordance with Section XV (Dispute Resolution). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Region and Site/Spill ID Number B5BF, the U.S. EPA Docket

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Number \_\_\_\_\_, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to:

Rich Murawski  
Site Attorney  
Office of Regional Counsel  
Mail Code C-14J  
77 West Jackson  
Chicago, IL 60604-3590

Howard Caine  
Remedial Project Manager  
Superfund Division  
Mail Code SR-6J  
77 West Jackson  
Chicago, IL 60604-3590

74. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

75. Penalties shall continue to accrue as provided in Paragraph 71 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

76. If Respondents fail to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 73.

77. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that U.S. EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by U.S. EPA), Paragraph 86. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

## XVII. FORCE MAJEURE

78. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents'

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best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

79. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify U.S. EPA orally within 48 hours of when Respondents first knew that the event might cause a delay. Within five days thereafter, Respondents shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

80. If U.S. EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Respondents in writing of its decision. If U.S. EPA agrees that the delay is attributable to a *force majeure* event, U.S. EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

## XVIII. PAYMENT OF RESPONSE COSTS

### 81. Payment of Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to U.S. EPA \$313,734.22 for Past Response Costs. Payment shall be made by Electronics Funds Transfer ("EFT") in accordance with current EFT procedures that U.S. EPA Region 5 will provide Respondents, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5 and Site/Spill ID Number B5BF. When the Past Response Costs identified in the previous paragraph are less than \$10,000, payment may, in lieu of the described EFT method, be made by certified or cashier's check made payable to "U.S. EPA Hazardous Substance Superfund." Each check, or letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5 and Site/Spill ID Number B5BF, and shall be sent to:

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US Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000

b. At the time of payment, Respondents shall send notice that payment has been made to:

Rich Murawski  
Site Attorney  
Office of Regional Counsel  
Mail Code C-14J  
77 West Jackson  
Chicago, IL 60604-3590

Howard Caine  
Remedial Project Manager  
Superfund Division  
Mail Code SR-6J  
77 West Jackson  
Chicago, IL 60604-3590

c. The total amount to be paid by Respondents pursuant to Subparagraph 81.a shall be deposited in the Elm Street Groundwater Contamination Site Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

## 82. Payments for Future Response Costs.

a. Respondents shall pay U.S. EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, U.S. EPA will send Respondents a bill requiring payment that includes Region 5's Itemized Cost Summary, which includes direct and indirect costs incurred by U.S. EPA and its contractors. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 81 of this Settlement Agreement, according to the following procedures.

(i) If the payment amount demanded in the bill is for \$10,000 or greater, payment shall be made to U.S. EPA by Electronics Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondents by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of party(ies) making payment, the Site name, U.S. EPA Region 5, and the Site/Spill Number B5BF.

(ii) If the amount demanded in the bill is less than \$10,000, the Settling Respondents may in lieu of the EFT procedures in subparagraph 82(a)(i) make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, and EPA Site/Spill ID Number B5BF. Settling Respondents shall send the check(s) to:

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US Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000

b. At the time of payment, Respondents shall send notice that payment has been made to:

Rich Murawski  
Site Attorney  
Office of Regional Counsel  
Mail Code C-14J  
77 West Jackson  
Chicago, IL 60604-3590

Howard Caine  
Remedial Project Manager  
Superfund Division  
Mail Code SR-6J  
77 West Jackson  
Chicago, IL 60604-3590

c. The total amount to be paid by Respondents pursuant to Subparagraph 82.a. shall be deposited in the Elm Street Groundwater Contamination Site Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

83. If Respondents do not pay Past Response Costs within 30 days of the Effective Date, or do not pay Future Response Costs within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance of Past Response Costs and Future Response Costs, respectively. The Interest on unpaid Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If U.S. EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondents shall make all payments required by this Paragraph in the manner described in Paragraph 82.

84. Respondents may contest payment of any Future Response Costs under Paragraph 82 if they determine that U.S. EPA has made an accounting error or if they believe U.S. EPA incurred excess costs as a direct result of an U.S. EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the U.S. EPA Project Coordinator. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the 30 day period pay all uncontested Future Response Costs to U.S. EPA in the manner described in Paragraph 81. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Indiana and remit to that escrow account funds equivalent to the amount of the contested Future Response

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Costs. Respondents shall send to the U.S. EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If U.S. EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to U.S. EPA in the manner described in Paragraph 81. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to U.S. EPA in the manner described in Paragraph 81. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse U.S. EPA for its Future Response Costs.

## **XIX. COVENANT NOT TO SUE BY U.S. EPA**

85. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs and Future Response Costs. This covenant not to sue shall take effect upon receipt by U.S. EPA of the Past Response Costs due under Section XVIII of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XVIII and XVI of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Respondents and does not extend to any other person.

## **XX. RESERVATIONS OF RIGHTS BY U.S. EPA**

86. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

87. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement

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Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.
- h. liability for costs incurred if U.S. EPA assumes the performance of the Work pursuant to paragraph 88.

88. Work Takeover. In the event U.S. EPA determines that Respondents have ceased implementation of any portion of the Work, are deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, U.S. EPA may assume the performance of all or any portion of the Work as U.S. EPA determines necessary. Respondents may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute U.S. EPA's determination that takeover of the Work is warranted under this Paragraph. Notwithstanding any other provision of this Settlement Agreement, U.S. EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## XXI. COVENANT NOT TO SUE BY RESPONDENTS

89. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

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b. any claim arising out of the Work or arising out of the response actions for which the Past Response Costs or Future Response Costs have or will be incurred, including any claim under the United States Constitution, the Indiana Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Past Response Costs or Future Response Costs.

90. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 87 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

91. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

92. Natural Resource Damages. For the purposes of Section 113(g)(1) of CERCLA, the parties agree that, upon issuance of this Settlement Agreement, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within 3 years after the completion of the remedial action.

## XXII. OTHER CLAIMS

93. By issuance of this Settlement Agreement, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents.

94. Except as expressly provided in Section XIX (Covenant Not to Sue by U.S. EPA), nothing in this Settlement Agreement constitutes a satisfaction of, or release from, any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

95. No action or decision by U.S. EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review.

## XXIII. CONTRIBUTION PROTECTION

96. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or



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claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

b. The parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work, Past Response Costs, and Future Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands against any person not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

## XXIV. INDEMNIFICATION

97. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to, attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

98. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

99. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site.

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## XXV. INSURANCE

100. At least 45 days prior to commencing any On-Site Work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of 10 million dollars, combined single limit, naming the United States as an additional insured. Within the same period, Respondents shall provide U.S. EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## XXVI. FINANCIAL ASSURANCE

101. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security for the benefit of U.S. EPA in the amount \$ \_\_\_\_\_ one or more of the following forms, in order to secure the full and final completion of Work by Respondents:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of U.S. EPA, issued by financial institution(s) acceptable in all respects to U.S. EPA equaling the total estimated cost of the Work;
- c. a trust fund administered by a trustee acceptable in all respects to U.S. EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to U.S. EPA, which ensures the payment and/or performance of the Work;
- e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondents, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; including a demonstration that any such company satisfied the financial test requirements of 40 C.F.R. § 264.143(f);
- f. a corporate guarantee to perform the Work by one or more of Respondents, including a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. §143(f); and/or

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g. any other financial mechanism acceptable to and approved by U.S. EPA.

102. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to U.S. EPA, determined in U.S. EPA's sole discretion. In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 30 days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed in Paragraph 101, above. In addition, if at any time U.S. EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to U.S. EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

103. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 102.e. or 102.f. of this Settlement Agreement, Respondents shall (i) demonstrate to U.S. EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date, to U.S. EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. § 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the current cost estimate of \$ \_\_\_\_\_ for the Work at the Site shall be used in relevant financial test calculations.

104. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work had diminished below the amount set forth in Paragraph 104 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to U.S. EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from U.S. EPA. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution) and may reduce the amount of security in accordance with U.S. EPA's written decision resolving the dispute.

105. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by U.S. EPA, provided that U.S. EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

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## **XXVII. SEVERABILITY/INTEGRATION/APPENDICES**

106. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

107. This Settlement Agreement including its appendices, and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the SOW.

"Appendix B" is the map of the Site

## **XXVIII. ADMINISTRATIVE RECORD**

108. U.S. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondents shall submit to U.S. EPA documents developed during the course of the RI/FS upon which selection of the response action may be based. Upon request of U.S. EPA, Respondents shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. Upon request of U.S. EPA, Respondents shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local or other federal authorities concerning selection of the response action. At U.S. EPA's discretion, Respondents shall establish a community information repository at or near the Site, to house one copy of the administrative record.

## **XXIX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

109. This Settlement Agreement shall be effective the day the Settlement Agreement is signed by the Director of the Superfund Division or his/her delegatee.

110. This Settlement Agreement may be amended by mutual agreement of U.S. EPA and Respondents. Amendments shall be in writing and shall be effective when signed by U.S. EPA. U.S. EPA Project Coordinators do not have the authority to sign amendments to the Settlement Agreement.

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111. No informal advice, guidance, suggestion, or comment by the U.S. EPA Project Coordinator or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

## XXX. NOTICE OF COMPLETION OF WORK

112. When U.S. EPA determines, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Future Response Costs and record retention, U.S. EPA will provide written notice to Respondents. If U.S. EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Planning Documents or other work plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved RI/FS Planning Documents or other approved work plan and shall submit the required deliverable(s) in accordance with the U.S. EPA notice. Failure by Respondents to implement the approved modified RI/FS Planning Documents or other work plan shall be a violation of this Settlement Agreement.

It is so ORDERED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

EFFECTIVE DATE: \_\_\_\_\_

The Undersigned Party enters into this Administrative Settlement Agreement and Order on Consent in the matter of the Elm Street Groundwater Contamination Site.

Agreed this \_\_\_\_ day of \_\_\_\_\_, 2007.

For Respondent \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

**Enclosure #3**

**STATEMENT OF WORK**

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## STATEMENT OF WORK FOR A REMEDIAL INVESTIGATION AND FEASIBILITY STUDY AT THE ELM STREET GROUNDWATER CONTAMINATION SITE TERRE HAUTE, INDIANA

### **I. PURPOSE:**

This Statement of Work (SOW) sets forth the requirements for conducting a Remedial Investigation and Feasibility Study (RI/FS) at the Elm Street Groundwater Contamination Site in Terre Haute, Indiana ("Site"). The Site includes the property located at 118 Elm Street, 800 North 3<sup>rd</sup> Street and 117 Elm Street, respectively, in Terre Haute, Indiana and any nearby areas where hazardous substances, pollutants or contaminants from the property or from former operations at the property have or may have come to be located. The RI Report shall fully evaluate the nature and extent of hazardous substances, pollutants or contaminants at or from the Site. The RI Report shall also assess the risk which these hazardous substances, pollutants or contaminants present for human health and the environment. The RI Report shall provide sufficient data to develop and evaluate effective remedial alternatives. The FS Report shall evaluate alternatives for addressing the impact to human health and the environment from hazardous substances, pollutants or contaminants at the Site.

The Respondents shall prepare and complete the RI and FS Reports in compliance with the AOC, SOW, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300) as amended and all requirements and guidance for RI/FS studies and reports, including but not limited to U.S. EPA Superfund *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA* (EPA/540/G-89/004, October 1988) (RI/FS Guidance), and any other guidance that the United States Environmental Protection Agency (U.S. EPA) uses in conducting or submitting deliverables for a RI/FS. The RI/FS Guidance describes the report format and the required report content. Exhibit B sets forth a partial list of guidance used by U.S. EPA for a RI/FS.

The Respondents shall furnish all personnel, materials, and services necessary for, or incidental to, performing the RI/FS at the Site, except as otherwise specified herein.

### **II. DOCUMENT REVIEW**

The Respondents shall submit all documents or deliverables required as part of this SOW to the U.S. EPA, with a copy to the Indiana Department of Environmental Management (IDEM), for review and approval by U.S. EPA. After review of any plan, report or other item which is required to be submitted for approval pursuant to this AOC, U.S. EPA, after reasonable opportunity for review and comment by IDEM, may: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. (See Section X of the AOC for procedures concerning U.S. EPA Approval of Plans and Other Submissions)

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## III. SCOPE

Respondents shall complete the following tasks as part of this RI/FS:

- Task 1: Project Scoping and RI/FS Planning Documents
- Task 2: Community Relations and Technical Assistance Plan
- Task 3: Site Characterization
- Task 4: Remedial Investigation Report
- Task 5: Treatability Studies
- Task 6: Development and Screening of Alternatives (Technical Memorandum)
- Task 7: Detailed Analysis of Alternatives (FS Report)
- Task 8: Progress Reports

### **TASK 1: PROJECT SCOPING AND RI/FS PLANNING DOCUMENTS**

#### **1.1 Site Background**

The Respondents shall gather and analyze the existing Site background information and shall conduct a Site visit to assist in planning the scope of the RI/FS.

##### **1.1.1 Collect and Analyze Existing Data**

Before planning the RI/FS activities, the Respondents shall thoroughly compile and review all existing Site data. Historical data shall be submitted electronically according to U.S. EPA Region 5 specifications. Existing site data includes presently available data relating to the varieties and quantities of hazardous substances, pollutants and contaminants at the Site, past disposal practices, and the results of previous sampling activities. An example of existing information about the Site includes the Expanded Site Inspection Report for Bi-State Products.

##### **1.1.2. Conduct Site Visit**

The Respondents shall visit the Site during the project scoping phase to develop a better understanding of the Site, and focus on the sources and the areas of contamination, as well as potential exposure pathways and receptors at the Site. During the Site visit, the Respondents shall observe, to the extent possible, the site's physiography, hydrology, geology, and demographics, as well as natural resource, ecological and cultural features. The Respondents shall coordinate this visit with the U.S. EPA Remedial Project Manager (RPM).

#### **1.2. RI/FS Planning Documents (Work Plan/Field Sampling Plan/QAPP)**

##### **1.2.1. General Requirements**

Within 60 calendar days after the effective date of the Administrative Order on Consent, the Respondents shall submit draft RI/FS Planning Documents (including the Work



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Plan/Field Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan) to U.S. EPA, with a copy to IDEM, for review and approval by U.S. EPA.

The objective of the RI/FS Planning Documents is to develop an RI/FS strategy and general management plan that accomplishes the following:

- A remedial investigation that fully determines the nature and extent of the release or threatened release of hazardous substances, pollutants, or contaminants at and from the Site. In performing this investigation, the Respondents shall gather sufficient data, samples, and other information to fully characterize the nature and extent of the contamination at the Site, to support the human health and ecological risk assessments, and to provide sufficient data for the identification and evaluation of remedial alternatives for this Site.
- A feasibility study that identifies and evaluates alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants at and from the Site.

When scoping the specific aspects of the project, the Respondents shall meet with U.S. EPA to discuss all project planning decisions and special concerns associated with the Site.

The RI/FS Planning Documents shall include a detailed description of the tasks the Respondents shall perform, the information needed for each task; a detailed description of the information the Respondents shall produce during and at the conclusion of each task, and a description of the work products that the Respondents shall submit to U.S. EPA and IDEM. This includes the deliverables set forth in this SOW; a schedule for each of the required activities consistent with the RI/FS Guidance and other relevant guidance; and a project management plan including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, requirements for submittal of electronic data, data format and backup data management), monthly reports to U.S. EPA and IDEM, and meetings and presentations to U.S. EPA and IDEM at the conclusion of each major phase of the RI/FS. The Respondents shall refer to Appendix B of the RI/FS Guidance for a description of the required contents of the RI/FS Planning Documents.

The RI/FS Planning Documents shall include data needs for fully characterizing the nature and extent of the contamination at the site, evaluating risks and developing and evaluating remedial alternatives. The RI/FS Planning Documents shall reflect coordination with treatability study requirements, if any. The RI/FS Planning Documents shall also include a process for and manner of identifying Federal and State ARARs, and for preparing the human health and ecological risk assessments and the feasibility study.

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## **1.2.2. Specific Requirements**

The Respondents shall prepare the RI/FS Planning Documents as described in "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," October, 1988 and shall include:

### **1.2.2.1. Site Background**

The Site Background section shall include a brief summary of the Site location, description, physiography, hydrology, geology, demographics, ecological, cultural and natural resource features, Site history, description of previous investigations and responses conducted at the Site by local, state, federal, or private parties, and Site data evaluations and project planning completed during the scoping process.

The Site background section shall discuss areas of waste handling and disposal activities, the locations of existing groundwater monitoring wells, if any, and previous surface water, sediment, soil, groundwater, and air sampling locations. The Site Background section shall include a summary description of available data and identify areas where hazardous substances, pollutants or contaminants were detected and the detected levels. This includes the data in the previous Expanded Site Investigation report. The Site Background section shall include tables displaying the minimum and maximum levels of detected hazardous substances, pollutants or contaminants in Site areas and media.

### **1.2.2.2 Work Plan/Field Sampling Plan**

Respondents shall prepare the Work Plan/Field Sampling Plan (FSP) portion of the RI/FS Planning Documents to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet the Site-specific Data Quality Objectives as established in the Quality Assurance Project Plan (QAPP) and FSP. All sampling and analyses performed shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. The Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

Upon request by U.S. EPA, the Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. The Respondents shall provide U.S. EPA with the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. The Respondents shall also ensure the provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, *Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites*.

Upon request by U.S. EPA, the Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by the Respondents or their contractors or agents. The Respondents shall notify U.S. EPA

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not less than 15 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

## **1.2.2.2. Data Gap Description/Data Acquisition**

As part of the FSP, the Respondents shall analyze the currently available data. The Respondents shall identify those areas of the Site and nearby areas that require data and evaluation in order to define the extent of hazardous substances, pollutants or contaminants. This Section of the FSP shall include a description of the number, types, and locations of samples to be collected. The FSP shall include an environmental program to accomplish the following:

- ***Conduct Site Reconnaissance:*** The Respondents shall conduct:
  - Site surveys including property, boundary, utility rights-of-way, and topographic information.
  - Land Survey
  - Topographic Mapping
  - Field Screening
- ***Conduct Geological Investigations (Soils and Sediments):*** The Respondents shall conduct geological investigations to determine the extent of hazardous substances, pollutants or contaminants in surface soils, subsurface soils and sediments at the Site. As part of this geological investigation Respondents shall:
  - Collect Surface Soil Samples
  - Collect Subsurface Soil Samples
  - Soil Boring and Permeability Sampling
  - Collect Sediments Samples
  - Survey Soil Gases
  - Test Pits
  - Identify real-world horizontal, vertical, and elevation coordinates for all samples and site features in accordance with U.S. EPA Region 5 electronic data requirements
- ***Air Investigations:*** The Respondents shall conduct air investigations to determine the extent of atmospheric hazardous substances, pollutants or contaminants at and from the Site, which shall include:
  - Collection of Air Samples
  - Establishment of Air Monitoring Station
- ***Hydrogeological Investigations (Ground Water):*** The Respondents shall conduct hydrogeological investigations of ground water to determine the horizontal and vertical distribution of hazardous substances, pollutants or contaminants in the groundwater and the extent, fate and transport of any groundwater plumes containing hazardous substances, pollutants or contaminants. The hydrogeological investigation shall include:

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- Install Well Systems
  - Collect Samples from Upgradient, Downgradient, Private and municipal wells
  - Collect Samples During Drilling (e.g., HydroPunch or Equivalent)
  - Conduct Tidal Influence Study
  - Perform Hydraulic Tests (such as Pump Tests, Slug Tests and Grain Size Analyses)
  - Measure Ground-Water Elevations and determine horizontal and vertical sample locations in accordance with U.S. EPA Region 5 electronic data requirements
  - Modeling
  - Determine the direction of regional and local groundwater flow
  - Identify the local uses of groundwater including the number, location, depth and use of nearby private and municipal wells
- ***Conduct Hydrogeological Investigations (Surface Water):*** The Respondents shall conduct hydrogeological investigations to determine the nature and extent of contamination of surface water from the Site. The hydrogeological investigation shall include:
    - Collect Samples
    - Measure Surface-Water Elevation
  - ***Conduct Waste Investigation:*** The Respondents shall characterize the waste materials at the Site. Respondent shall conduct the following activities as part of these waste investigations.
    - Collect Samples (Gas, Liquid, Solid)
    - Dispose of Derived Waste (Gas, Liquid, Solid)
  - ***Conduct Geophysical Investigation:*** The Respondents shall conduct geophysical investigations to delineate waste depths, thicknesses and volume; the elevations of the underlying natural soil layer and the extent of cover over fill areas including the following, as appropriate:
    - Surface Geophysical Activity
    - Magnetometer
    - Electromagnetic
    - Ground-Penetrating Radar
    - Seismic Refraction
    - Resistivity
    - Site Meteorology
    - Cone Penetrometer Survey
    - Remote Sensor Survey
    - Radiological Investigation
    - Test Pits, trenches and soil borings
  - ***Conduct Ecological Investigation:*** The Respondents shall conduct ecological investigations to assess the impact to aquatic and terrestrial

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ecosystems from the disposal, release and migration of hazardous substances, pollutants or contaminants at the Site including:

- Wetland and Habitat Delineation
- Wildlife Observations
- Community Characterization
- Identification of Endangered Species
- Biota Sampling and Population Studies

- ***Collect Contaminated Building Samples:*** The Respondents shall collect contaminated building samples.
- ***Dispose of Investigation-Derived Waste:*** The Respondents shall characterize and dispose of investigation-derived wastes in accordance with local, State, and Federal regulations as specified in the FSP (see the Fact Sheet, *Guide to Management of Investigation-Derived Wastes*, 9345.3-03FS (January 1992)).
- ***Evaluate and Document the Need for Treatability Studies:*** If the Respondents or U.S. EPA identify remedial actions that involve treatment, the Respondents shall include treatability studies as outlined in Task 5 of this SOW unless the Respondents satisfactorily demonstrate to U.S. EPA that such studies are not needed. When treatability studies are needed, the Respondents shall plan initial treatability testing activities (such as research and study design) to occur concurrently with Site characterization activities.

## **1.2.2.3 Quality Assurance Project Plan (QAPP)**

The Respondents shall prepare a QAPP that covers sample analysis and data handling for samples collected during the RI, based on the AOC and guidance provided by U.S. EPA. The Respondents shall prepare the QAPP in accordance with the Uniform Federal Policy for Implementing Environmental Quality Systems (UFP-QS), the Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP) Manual, the UFP-QAPP Workbook, and the UFP-QAPP Compendium. The U.S. EPA Office of Solid Waste and Emergency Response (OSWER) approved the UFP-QS (Final, Version 2, March 2005). The QAPP may include Field-Based Analytical Methods, if appropriate and scientifically defensible.

The Respondents shall demonstrate, in advance to U.S. EPA's satisfaction, that each laboratory it may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the contaminants of concern (COCs) in the media sampled within detection and quantification limits consistent with both QA/QC procedures and DQOs approved in the QAPP. DQOs for each Area will be detailed in the Work Plan. The laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program ("CLP") is selected, methods consistent with CLP methods that would be used at the Areas for the purposes proposed and QA/QC procedures approved by U.S. EPA shall be used. The

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Respondents shall only use laboratories which have a documented QA program which complies with ANSI/ASQC E-4 1994, *Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs*, (American National Standard, January 5, 1995) and *EPA requirements for Quality Management Plans (QA/R-2)* (EPA/240/B-01/002, March 2001), or equivalent documentation as determined by U.S. EPA.

Upon request by U.S. EPA, the Respondents shall have its laboratory analyze samples submitted by U.S. EPA for QA monitoring. The Respondents shall provide U.S. EPA with the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. The Respondents shall also ensure the provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, *Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites* (July 6, 1992).

The Respondents shall participate in a pre-QAPP meeting or conference call with U.S. EPA. The purpose of this meeting or conference call is to discuss QAPP requirements and obtain any clarification needed to prepare the QAPP.

#### **1.2.2.4. Health and Safety Plan**

The Respondents shall prepare a Health and Safety Plan that conforms to their health and safety program and complies with the Occupational Safety and Health Administration (OSHA) regulations and protocols outlined in Title 29 of the Code of Federal Regulations (CFR), Part 1910. The Health and Safety Plan shall be prepared in accordance with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). The Health and Safety Plan shall include the 11 elements described in the RI/FS Guidance such as a health and safety risk analysis, a description of monitoring and personal protective equipment, medical monitoring, and Site control. U.S. EPA does not "approve" the Respondent's [s'] Health and Safety Plan, but rather U.S. EPA reviews it to ensure that all the necessary elements are included, and that the plan provides for the protection of human health and the environment, and after that review provides comments as may be necessary and appropriate. The safety plan must, at a minimum, follow the U.S. EPA's guidance document *Standard Operating Safety Guides* (Publication 9285.1-03, PB92-963414, June 1992).

## **TASK 2: COMMUNITY INVOLVEMENT SUPPORT**

U.S. EPA has the responsibility of developing and implementing community involvement activities for the Site. The critical community involvement planning steps performed by U.S. EPA and IDEM include conducting community interviews and developing a Community Involvement Plan. Although implementing the Community Involvement Plan is the responsibility of U.S. EPA, the Respondents, if directed by U.S. EPA, shall assist by providing information regarding the Site's history; participating in public meetings; assisting in preparing fact sheets for distribution to the general public; or conducting other activities approved by U.S.

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EPA. All PRP-conducted community involvement activities shall be planned and developed in coordination with U.S. EPA.

## **TASK 3: SITE CHARACTERIZATION**

### **3.1 Investigate and Define Site Physical and Biological Characteristics**

The Respondents shall collect data on the physical and biological characteristics of the site and its surrounding areas including the physical physiography, geology, and hydrology, and specific physical characteristics identified in the work plan. This information will be ascertained through a combination of physical measurements, observations, and sampling efforts and will be utilized to define potential transport pathways and human ecological receptor populations. In defining the site's physical characteristics the Respondents will also obtain sufficient engineering data (such as pumping characteristics) for the projection of contaminant fate and transport, and development and screening of remedial action alternatives, including information to assess treatment technologies.

The Respondents shall provide the RPM or the entity designated by the RPM with a paper copy and an electronic copy (according to U.S. EPA Region 5 format specification) of laboratory data within the monthly progress reports and in no event later than 60 calendar days after samples are shipped for analysis. In addition, the monthly progress reports will summarize field activities (including drilling locations, depths and field notes if requested by RPM), problems encountered, solutions to problems, and upcoming field activities.

### **3.2 Define Sources of Contamination**

The Respondents shall locate each source of contamination. For each location, Respondents shall determine the areal extent and depth of contamination by sampling at incremental depths on a sampling grid. Respondents shall determine the physical characteristics and chemical constituents and their concentrations for all known and discovered sources of contamination. The Respondents shall conduct sufficient sampling to define the boundaries of the contaminant sources to the level established in the QAPP and DQOs. Defining the source of contamination will include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

### **3.3 Describe the Nature and Extent/Fate and Transport of Contamination**

The Respondents shall gather information to describe the nature and extent of contamination as a final step during the field investigation. To describe the nature and extent of contamination, the Respondents will utilize the information on site physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondents will then implement an iterative monitoring program and any study program identified in the work plan or sampling plan such that by using analytical techniques sufficient to detect and quantify the concentration of contaminants, the migration of contaminants through the various media at site can be determined. In addition, the Respondents shall gather data for calculations of contaminant fate and transport. This process is continued until the area

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and depth of contamination are known to the level of contamination established in the QAPP and DQOs.

### **3.3.1 Evaluate site characteristics**

The Respondents shall analyze and evaluate the data to describe: (1) site physical and biological characteristics, (2) contaminant source characteristics, (3) nature and extent of contamination and (4) contaminant fate and transport. Results of the site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The Respondents shall evaluate the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to U.S. EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to U.S. EPA together with a sensitivity analysis. The RI data shall be presented electronically according to U.S. EPA Region 5 format requirements. Analysis of data collected for site characterization will meet the DQOs developed in the QAPP and stated in the FSP (or revised during the RI).

### **3.3.2 Baseline Human Health Risk Assessment and Baseline Ecological Risk Assessment.**

The Respondents shall conduct a baseline risk assessment to determine whether site contaminants pose a current or potential risk to human health and the environment in the absence of any remedial action. The major components of the Baseline Risk Assessment include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization.

Respondents shall conduct a baseline human health risk assessment that focuses on actual and potential risks to persons coming into contact with on-site hazardous substances, pollutants or contaminants as well as risks to the nearby residential, recreational and industrial worker populations from exposure to hazardous substances, pollutants or contaminants in groundwater, soils, sediments, surface water, air, and ingestion of contaminated organisms in nearby, impacted ecosystems. The human health risk assessment shall define central tendency and reasonable maximum estimates of exposure for current land use conditions and reasonable future land use conditions. The human health risk assessment shall use data from the Site and nearby areas to identify the contaminants of concern (COC), provide an estimate of how and to what extent human receptors might be exposed to these COCs, and provide an assessment of the health effects associated with these COCs. The human health risk assessment shall project the potential risk of health problems occurring if no cleanup action is taken at the Site and/or nearby areas, and establish target action levels for COCs (carcinogenic and non-carcinogenic).

Respondents shall conduct the human health risk assessment in accordance with U.S. EPA guidance including, at a minimum: "Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part A)," Interim Final (EPA-540-1-89-002)," OSWER Directive 9285.7-01A; December 1, 1989; and "Risk Assessment Guidance for



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Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," Interim, (EPA 540-R-97-033), OSWER 9285.7-01D, January, 1998 or subsequently issued guidance.

Respondents shall also conduct the human health risk assessment in accordance with the following additional guidance found in the following ISAPI OSWER directives:

- 1) "Clarification to the 1994 Revised Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities," OSWER Directive 9200.4-27; August, 1998,
- 2) "Implementation of the Risk Assessment Guidance for Superfund (RAGS) Volume I - Human Health Evaluation Manual, (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments) (Interim)," OSWER Directive 9285.7-01D-1; December 17, 1997,
- 3) "Soil Screening Guidance: Technical Background Document," OSWER Directive 9355.4-17A; May 1, 1996 and "Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites, OSWER Directive 9355.4 {24; March 2001},
- 4) "Soil Screening Guidance: User's Guide," Publication 9355.4-23; April, 1996,
- 5) "Revised Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities," OSWER Directive 9355.4-12; July 14, 1994,
- 6) "Guidance Manual for the Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children," Publication 9285.7-15-1; February, 1994, and associated, clarifying Short Sheets on IEUBK Model inputs, including but not limited to OSWER 9285.7-32 through 34, as listed on the OSWER lead internet site at [www.epa.gov/superfund/programs/lead/prods.htm](http://www.epa.gov/superfund/programs/lead/prods.htm),
- 7) "Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children," Version 0.99D, NTIS PB94-501517, 1994 or "Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children," Windows© version, 2001,
- 8) "Risk Assessment Guidance for Superfund: Volume I - Human Health Evaluation Manual: (Part B, Development of Risk-based Preliminary Remediation Goals)," Interim, OSWER Directive 9285.7-01B; December, 1991,
- 9) "Human Health Evaluation Manual, Supplemental Guidance: Standard Default Exposure Factors," OSWER Directive 9285.6-03; March 25, 1991, and
- 10) "Exposure Factors Handbook," Volumes I, II, and III; August 1997 (EPA/600/P-95/002Fa,b,c).

Respondents shall also comply with the guidance on assessing human health risk associated with adult exposures to lead in soil as found in the following document:

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“Recommendations of the Technical Review Workgroup for Lead for an Interim Approach to Assessing Risks Associated with Adult Exposures to Lead in Soil,” December, 1996. This document may be downloaded from the Internet at the following address: [www.epa.gov/superfund/programs/lead/prods.htm](http://www.epa.gov/superfund/programs/lead/prods.htm).

Respondents shall also comply with the “Superfund Lead- Contaminated Residential Sites Handbook,” December 2002 by the EPA Lead Sites Workgroup.

Additional applicable or relevant guidance may be used only if approved by U.S. EPA.

Respondents shall prepare the Human Health Risk Assessment according to the guidelines outlined below:

- ***Hazard Identification (sources).*** The Respondents shall review available information on the hazardous substances present at the site and identify the major contaminants of concern.
- ***Dose-Response Assessment.*** Contaminants of concern should be selected based on their intrinsic toxicological properties.
- ***Prepare Conceptual Exposure/Pathway Analysis.*** Critical exposure pathways (e.g., drinking water) shall be identified and analyzed. The proximity of contaminants to exposure pathways and their potential to migrate into critical exposure pathways shall be assessed.
- ***Characterization of Site and Potential Receptors.*** The Respondents shall identify and characterize human populations in the exposure pathways.
- ***Exposure Assessment.*** The exposure assessment will identify the magnitude of actual or potential human exposures, the frequency and duration of these exposures, and the routes by which receptors are exposed. The exposure assessment shall include an evaluation of the likelihood of such exposures occurring and shall provide the basis for the development of acceptable exposure levels. In developing the exposure assessment, the Respondents shall develop reasonable maximum estimates of exposure for both current land use conditions and potential land use conditions at the site.
- ***Risk Characterization.*** During risk characterization, chemical-specific toxicity information, combined with quantitative and qualitative information from the exposure assessment, shall be compared to measured levels of contaminant exposure levels and the levels predicted through environmental fate and transport modeling. These comparisons shall determine whether concentrations of contaminants at or near the site are affecting or could potentially affect human health.

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- **Identification of Limitations/Uncertainties.** The Respondents shall identify critical assumptions (e.g., background concentrations and conditions) and uncertainties in the report.
- **Site Conceptual Model.** Based on contaminant identification, exposure assessment, toxicity assessment, and risk characterization, the Respondents shall develop a conceptual model of the site.
- **Final Human Health Risk Assessment Report.** After the draft Human Health Risk Assessment Report has been reviewed and commented on by U.S. EPA, the Respondents will incorporate U.S. EPA comments and submit the final Human Health Risk Assessment Report.

Respondents shall conduct the ecological risk assessment in accordance with U.S. EPA guidance including, at a minimum: "Ecological Risk Assessment Guidance for Superfund, Process for Designing and Conducting Ecological Risk Assessments, (EPA-540-R-97-006, June 1997), OSWER Directive 9285.7-25 and shall follow the guidelines outlined below:

Respondents shall prepare the Ecological Risk Assessment according to the guidelines outlined below:

- **Hazard Identification (sources).** The Respondents shall review available information on the hazardous substances present at the site and identify the major contaminants of concern.
- **Dose-Response Assessment.** Contaminants of concern should be selected based on their intrinsic toxicological properties.
- **Prepare Conceptual Exposure/Pathway Analysis.** Critical exposure pathways (e.g., surface water) shall be identified and analyzed. The proximity of contaminants to exposure pathways and their potential to migrate into critical exposure pathways shall be assessed.
- **Characterization of Site and Potential Receptors.** The Respondents shall identify and characterize environmental exposure pathways.
- **Select Chemicals, Indicator Species, and End Points.** In preparing the assessment, The Respondents will select representative chemicals, indicator species (species that are especially sensitive to environmental contaminants), and end points on which to concentrate.
- **Exposure Assessment.** The exposure assessment will identify the magnitude of actual or environmental exposures, the frequency and duration of these exposures, and the routes by which receptors are exposed. The exposure assessment shall include an evaluation of the

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likelihood of such exposures occurring and shall provide the basis for the development of acceptable exposure levels. In developing the exposure assessment, The Respondents shall develop reasonable maximum estimates of exposure for both current land use conditions and potential land use conditions at the site.

- ***Toxicity Assessment/Ecological Effects Assessment.*** The toxicity and ecological effects assessment will address the types of adverse environmental effects associated with chemical exposures, the relationships between magnitude of exposures and adverse effects, and the related uncertainties for contaminant toxicity (e.g., weight of evidence for a chemical's carcinogenicity).
- ***Risk Characterization.*** During risk characterization, chemical-specific toxicity information, combined with quantitative and qualitative information from the exposure assessment, shall be compared to measured levels of contaminant exposure levels and the levels predicted through environmental fate and transport modeling. These comparisons shall determine whether concentrations of contaminants at or near the site are affecting or could potentially affect the environment.
- ***Identification of Limitations/Uncertainties.*** The Respondents shall identify critical assumptions (e.g., background concentrations and conditions) and uncertainties in the report.
- ***Site Conceptual Model.*** Based on contaminant identification, exposure assessment, toxicity assessment, and risk characterization, The Respondents shall develop a conceptual model of the site.
- ***Final Ecological Risk Assessment Report.*** After the draft Ecological Risk Assessment Report has been reviewed and commented on by U.S. EPA, The Respondents will incorporate U.S. EPA comments and submit the final Ecological Risk Assessment Report.

## **3.4 Reuse Assessment**

If U.S. EPA, in its sole discretion, determines that a Reuse Assessment is necessary, Respondents will perform the Reuse Assessment in accordance with U.S. EPA guidance, including, but not limited to: "Reuse Assessments: A Tool To Implement The Superfund Land Use Directive, OSWER 9355.7-06P, June 4, 2001. The Reuse Assessment should provide sufficient information to develop realistic assumptions of the reasonably anticipated future uses for the Site.

## **TASK 4: REMEDIAL INVESTIGATION (RI) REPORT**

Within 120 calendar days following the approval of the Final RI/FS Planning Documents (Task 1) (unless otherwise approved by U.S. EPA in the Final RI/FS Planning Documents ), the

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Respondents shall submit to U.S. EPA, with a copy to IDEM, for review and approval by U.S. EPA, an RI Report addressing all of the Site and nearby areas. The RI Report shall be consistent with the Administrative Order on Consent and this SOW. The RI Report shall accurately establish the site characteristics such as media contaminated, extent of contamination, and the physical boundaries of the contamination. Pursuant to this objective, the Respondents shall obtain only the essential amount of detailed data necessary to determine the key(s) contaminant(s) movement and extent of contamination. The key contaminant(s) must be selected based on persistence and mobility in the environment and the degree of hazard. The key contaminant(s) identified in the RI shall be evaluated for receptor exposure and an estimate of the key contaminant(s) level reaching human or environmental receptors must be made. The Respondents shall use existing standards and guidelines such as drinking-water standards, water-quality criteria, and other criteria accepted by the U.S. EPA as appropriate for the situation to evaluate effects on human receptors who may be exposed to the key contaminant(s) above appropriate standards or guidelines. Respondents shall complete the RI Report in accordance with the following requirements:

The Respondents shall submit an RI Report to U.S. EPA for review and approval pursuant to Section 2, which includes the following:

- ***Executive Summary.***
- ***Site Background.*** The Respondents shall assemble and review available facts about the regional conditions and conditions specific to the site under investigation.
- ***Investigation.***
  - Field Investigation & Technical Approach
  - Chemical Analysis & Analytical Methods
  - Field Methodologies
    - Biological
    - Surface Water
    - Sediment
    - Soil Boring
    - Soil Sampling
    - Monitoring Well Installation
    - Groundwater Sampling
    - Hydrogeological Assessment
    - Air Sampling
- ***Site Characteristics.***
  - Geology
  - Hydrogeology
  - Meteorology
  - Demographics and Land Use
  - Ecological Assessment

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- ***Nature and Extent of Contamination.***
  - Contaminant Sources
  - Contaminant Distribution and Trends
- ***Fate and Transport.***
  - Contaminant Characteristics
  - Transport Processes
  - Contaminant Migration Trends
- ***Human Risk Assessment.***
  - Hazard Identification (sources)
  - Dose-Response Assessment
  - Prepare Conceptual Exposure/Pathway Analysis
  - Characterization of Site and Potential Receptors
  - Exposure Assessment
  - Risk Characterization
  - Identification of Limitations/Uncertainties
  - Site Conceptual Model
- ***Ecological Risk Assessment.***
  - Hazard Identification (sources)
  - Dose-Response Assessment
  - Prepare Conceptual Exposure/Pathway Analysis
  - Characterization of Site and Potential Receptors
  - Select Chemicals, Indicator Species, and End Points
  - Exposure Assessment
  - Toxicity Assessment/Ecological Effects Assessment
  - Risk Characterization
  - Identification of Limitations/Uncertainties
  - Site Conceptual Model
- ***Summary and Conclusions.***

## **TASK 5: TREATABILITY STUDIES**

If U.S. EPA or the Respondents determine that treatability testing is necessary, the Respondents shall conduct treatability studies as described in this Task 5 of this SOW. In addition, if applicable, the Respondents shall use the testing results and operating conditions in the detailed design of the selected remedial technology. The Respondents shall perform the following activities.

### **5.1 Determine Candidate Technologies and of the Need for Testing**

The Respondents shall submit a Candidate Technologies and Testing Needs Technical Memorandum, to U.S. EPA, with a copy to IDEM, for review and approval by U.S. EPA, that identifies candidate technologies for a treatability studies program no later than at the time of submittal of the draft RI Report. The list of candidate technologies shall cover the range of

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technologies required for alternatives analysis. The Respondents shall determine and refine the specific data requirements for the testing program during Site characterization and the development and screening of remedial alternatives.

## **5.1.1 Conduct Literature Survey and Determine the Need for Treatability Testing**

Within the Candidate Technologies and Testing Needs Technical Memorandum, the Respondents shall conduct a literature survey to gather information on the performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate technologies. Respondents shall conduct treatability studies except where Respondents can demonstrate to U.S. EPA's satisfaction that they are not needed.

## **5.2 Treatability Testing and Deliverables**

### **5.2.1 Treatability Testing Work Plan and Sampling and Analysis Plan (SAP)**

If U.S. EPA determines that treatability testing is necessary, U.S. EPA will decide on the type of treatability testing to use (e.g., bench versus pilot). Within 30 calendar days of a request of U.S. EPA, the Respondents shall submit a Treatability Testing Work Plan and a SAP, or amendments to the original RI/FS Work Plan, FSP and QAPP to U.S. EPA, with a copy to IDEM, for review and approval by U.S. EPA, that describes the Site background, the remedial technology(ies) to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, and residual waste management. The Respondents shall document the DQOs for treatability testing as well. If pilot scale treatability testing is to be performed, the Treatability Study Work Plan shall describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-Site, the plans shall address all permitting requirements. The requirements of SAPs are outlined in Task 1.3.2 of this SOW.

### **5.2.2 Treatability Study Health and Safety Plan**

If the original Health and Safety Plan is not adequate for defining the activities to be performed during the treatability tests, the Respondents shall submit a separate or amended Health and Safety Plan. Task 1.2.2 of this SOW provides additional information on the requirements of the Health and Safety Plan. U.S. EPA and IDEM review, but do not "approve" the Treatability Study Health and Safety Plan.

### **5.2.3 Treatability Study Evaluation Report**

Following the completion of the treatability testing, the Respondents shall analyze and interpret the testing results in a technical report to U.S. EPA and IDEM. Respondents shall submit the treatability study report according to the schedule in the Treatability Study Work Plan. This report may be a part of the Site Characterization Technical

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Memorandum, the RI Report or submitted as a separate deliverable. The Treatability Study Evaluation Report shall evaluate each technology's effectiveness, implementability and cost, and actual results as compared with predicted results. The report shall also evaluate full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

## **TASK 6: DEVELOPMENT AND SCREENING OF ALTERNATIVES (Technical Memorandum)**

The Respondents shall develop and screen an appropriate range of remedial alternatives that will be evaluated by the Respondents. This range of alternatives shall include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which vary in the types of treatment, the amount treated, and the manner in which long-term residuals or untreated wastes are managed; options involving containment with little or no treatment; options involving both treatment and containment; and a no-action alternative. The Respondents shall perform the following activities as a function of the development and screening of remedial alternatives.

### **6.1 Alternatives Development and Screening Deliverables**

The Respondents shall prepare and submit three technical memoranda for this task: a Remedial Action Objectives Technical Memorandum, an Alternative Arrays Technical Memorandum and a Comparative Analysis of Alternatives Memorandum.

#### **6.1.1 Remedial Action Objectives Technical Memorandum**

The Respondents shall submit a Remedial Action Objectives Technical Memorandum to U.S. EPA, with a copy to the IDEM, for review and approval by U.S. EPA. The Respondents shall submit the Remedial Action Objectives Technical Memorandum at the same time as the Draft RI Report. Based on the baseline human health and ecological risk assessments, the Respondents shall document the Site-specific remedial action objectives in a Remedial Action Objectives Technical Memorandum. The remedial action objectives shall specify the contaminants and media of concern, potential exposure pathways and receptors; and contaminant level or range of levels (at particular locations for each exposure route) that are protective of human health and the environment. Remedial action objectives shall be developed by considering the factors set forth in 40 C.F.R. Section 300.430(e)(2)(i). The Respondents shall incorporate U.S. EPA's comments on the Remedial Action Objectives Technical Memorandum in the Alternatives Screening Technical Memorandum.

#### **6.1.2 Alternatives Screening Technical Memorandum**

The Respondents shall submit an Alternatives Screening Technical Memorandum to U.S. EPA, with a copy to IDEM, for review and approval by U.S. EPA. The Alternatives Screening Technical Memorandum shall summarize the work performed and the results of each of the above tasks, and shall include an alternatives array summary. If required by U.S. EPA, the Respondents shall modify the alternatives array to assure that the array identifies a complete and appropriate range of viable alternatives to be considered in the detailed



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analysis. The Alternatives Screening Technical Memorandum shall document the methods, the rationale and the results of the alternatives screening process. The Respondents shall incorporate U.S. EPA's comments on the Alternatives Screening Technical Memorandum in the Comparative Analysis of Alternatives Technical Memorandum. The Respondents shall submit the Alternatives Screening Technical Memorandum within 21 calendar days after receipt of U.S. EPA's comments on the Remedial Action Objectives Technical Memorandum.

## **6.1.2.1 Develop General Response Actions**

In the Alternatives Technical Memorandum, the Respondents shall develop general response actions for each medium of interest including containment, treatment, excavation, pumping, or other actions, singly or in combination, to satisfy the U.S. EPA-approved remedial action objectives.

## **6.1.2.2 Identify Areas or Volumes of Media**

In the Alternatives Technical Memorandum, the Respondents shall identify areas or volumes of media to which the general response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives. The Respondents shall also take into account the chemical and physical characterization of the Site.

## **6.1.2.3 Identify, Screen, and Document Remedial Technologies**

In the Alternatives Technical Memorandum, the Respondents shall identify and evaluate technologies applicable to each general response action to eliminate those that cannot be implemented at the Site. The Respondents shall refine applicable general response actions to specify remedial technology types. The Respondents shall identify technology process options for each of the technology types concurrently with the identification of such technology types or following the screening of considered technology types. The Respondents shall evaluate process options on the basis of effectiveness, implementability, and cost factors to select and retain one or, if necessary, more representative processes for each technology type. The Respondents shall summarize and include the technology types and process options in the Alternatives Screening Technical Memorandum. Whenever practicable, the alternatives shall also consider the CERCLA preference for treatment over conventional containment or land disposal approaches.

In the Alternatives Technical Memorandum, the Respondents shall provide a preliminary list of alternatives to address contaminated soil, sediments, surface water, groundwater, and air contamination at the Site that shall consist of, but is not limited to, treatment technologies, removal and off-site treatment/disposal, removal and on-site disposal, and in-place containment for soils, sediments, and wastes. See 40 CFR 300.430(e)(1)-(7). The Respondents shall specify the reasons for eliminating any alternatives.

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## **6.1.2.4 Assemble and Document Alternatives**

The Respondents shall assemble the selected representative technologies into alternatives for each affected medium or operable unit. Together, all of the alternatives shall represent a range of treatment and containment combinations that shall address either the Site or the operable unit as a whole. The Respondents shall prepare a summary of the assembled alternatives and their related ARARs for the Alternatives Screening Technical Memorandum. The Respondents shall specify the reasons for eliminating alternatives during the preliminary screening process.

## **6.1.2.5 Refine Alternatives**

The Respondents shall refine the remedial alternatives to identify the volumes of contaminated media addressed by the proposed processes and size critical unit operations as necessary. The Respondents shall collect sufficient information for an adequate comparison of alternatives. The Respondents shall also modify the remedial action objectives for each chemical in each medium as necessary to incorporate any new human health and ecological risk assessment information presented in the Respondent's [s] baseline human health and ecological risk assessment reports. Additionally, the Respondents shall update ARARs as the remedial alternatives are refined.

## **6.1.3 Conduct and Document Screening Evaluation of Each Alternative**

The Respondents may perform a final screening process based on short and long term aspects of effectiveness, implementability, and relative cost. Generally, this screening process is only necessary when there are many feasible alternatives available for a detailed analysis. If necessary, the Respondents shall conduct the screening of alternatives to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening shall preserve the range of treatment and containment alternatives that was initially developed. The range of remaining alternatives shall include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondents shall prepare an Alternatives Screening Technical Memorandum that summarizes the results and reasoning employed in screening; arrays the alternatives that remain after screening; and identifies the action-specific ARARs for the alternatives that remain after screening.

## **TASK 7: DETAILED ANALYSIS of ALTERNATIVES (FS REPORT)**

The Respondents shall conduct and present a detailed analysis of remedial alternatives to provide U.S. EPA with the information needed to select a Site remedy.

### **7.1 Detailed Analysis of Alternatives**

The Respondents shall conduct a detailed analysis of the remedial alternatives for the Site. The detailed analysis shall include an analysis of each remedial option against each of the nine evaluation criteria set forth in 40 C.F.R. Section 300.430(e)(9)(iii) and a comparative analysis of all options using the same nine criteria as a basis for comparison.

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## **7.1.1 Apply Nine Criteria and Document Analysis**

The Respondents shall apply the nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will protect human health and the environment and meet remedial action objectives; will comply with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health and the environment and how the alternative meets each of the remedial action objectives; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) cost; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: criteria 8 and 9 are considered after the RI/FS report has been released to the general public.) For each alternative the Respondents shall provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative, and (2) a discussion of the individual criterion assessment. If the Respondents do not have direct input on criteria (8) state (or support agency) acceptance and (9) community acceptance, U.S. EPA will address these criteria.

## **7.1.2 Compare Alternatives Against Each Other and Document the Comparison of Alternatives**

The Respondents shall perform a comparative analysis between the remedial alternatives. That is, the Respondents shall compare each alternative against the other alternatives using the evaluation criteria as a basis of comparison. U.S. EPA will identify and select the preferred alternative. The Respondents shall prepare a Comparative Analysis of Alternatives Technical Memorandum which summarizes the results of the comparative analysis and fully and satisfactorily addresses and incorporates U.S. EPA's comments on the Alternatives Screening Technical Memorandum. The Respondents shall incorporate U.S. EPA's comments on the Comparative Analysis of Alternatives Technical Memorandum in the draft FS Report. The Respondents shall submit the Comparative Analysis of Alternatives Memorandum within 21 calendar days after receipt of U.S. EPA's comments on the Alternatives Screening Technical Memorandum.

## **7.1.3. Alternatives Analysis for Institutional Controls**

If any of the Alternatives rely on Institutional Controls, the Comparative Analysis Technical Memorandum shall include a memorandum on the Institutional Controls which shall: 1) state the objectives (i.e., what will be accomplished) for the Institutional Controls; 2) determine the specific types of Institutional Controls that can be used to meet the remedial objectives; 3) investigate when the Institutional Controls need to be implemented and/or secured and how long it must be in place; 4) research, discuss and document any agreement with the proper entities (e.g., state, local government entities, local landowners, conservation organizations) on exactly who will be responsible for securing, maintaining and enforcing the Institutional Controls. The Memorandum shall also evaluate the

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Institutional Controls against the nine criteria including, but not limited to, costs to implement, monitor and/or enforce the Institutional Controls.

## **7.2 Feasibility Study Report**

Within 21 calendar days after receipt of U.S. EPA's comments on the Comparative Analysis of Alternatives Technical Memorandum, the Respondents shall prepare and submit a draft FS Report to U.S. EPA for its review pursuant to Section 2. The FS report shall summarize the development and screening of the remedial alternatives and present the detailed analysis of remedial alternatives. In addition, the FS Report shall also include the information U.S. EPA will need to prepare relevant sections of the Record of Decision (ROD) for the Site [see Chapters 6 and 9 of U.S. EPA's *A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents* (EPA 540-R-98-031, July 1999) for the information that is needed].

## **TASK 8: PROGRESS REPORTS**

The Respondents shall submit monthly written progress reports to U.S. EPA and IDEM concerning actions undertaken pursuant to the AOC and this SOW, beginning 30 calendar days after the effective date of the AOC, until the termination of the AOC, unless otherwise directed in writing by the RPM. These reports shall include, but not be limited to, a description of all significant developments during the preceding period, including the specific work that was performed and any problems that were encountered; paper and electronic copies (formatted according to U.S. EPA specifications) and summary of the analytical data that was received during the reporting period; and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and actual or planned resolutions of past or anticipated problems. The monthly progress reports will summarize the field activities conducted each month including, but not limited to drilling and sample locations, depths and descriptions; boring logs; sample collection logs; field notes; problems encountered; solutions to problems; a description of any modifications to the procedures outlined in the RI/FS Work Plan, the FSP, QAPP or Health and Safety Plan, with justifications for the modifications; a summary of all data received during the reporting period and the analytical results; and upcoming field activities. In addition, the Respondents shall provide the RPM or the entity designated by the RPM with all laboratory data within the monthly progress reports and in no event later than 60 calendar days after samples are shipped for analysis.

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## EXHIBIT A SCHEDULE FOR MAJOR DELIVERABLES

<b>DELIVERABLE</b>	<b>DUE DATE</b>
TASK 1.2.2 - RI/FS Planning Documents, including Work Plan/Field Sampling Plan, Quality Assurance Project Plan and Health and Safety Plan	RI/FS Planning documents due 30 calendar days of the effective date of the Administrative Order on Consent. Final RI/FS Planning Documents due 21 calendar days after U.S. EPA notification of any modifications required pursuant to Section 2 of the SOW and Section X of the AOC.
Task 3 - Site Characterization Technical Communications	To be included in the monthly Progress Reports.
TASK 4 - RI Report	RI Report due 45 calendar days following U.S. EPA receipt of RI data. Final RI Report due 21 calendar days after receipt of U.S. EPA's notification of modifications under Section 2 of this SOW.
TASK 5.1 - Candidate Technologies and Testing Needs Technical Memorandum	No later than at the time of submittal of the draft RI Report.
TASK 5.2.1 - Draft and Final Treatability Testing Work Plan and SAP or Amendments to the Original RI/FS Work Plan, FSP and/or QAPP.	Within 30 calendar days of request of U.S. EPA .
TASK 5.2.2 - Draft and Final Treatability Testing Health and Safety Plan or Amendment to the Original Health and Safety Plan	Within 30 calendar days of request of U.S. EPA.
TASK 5.2.3 - Draft and Final Treatability Study Evaluation Report	With the Site Characterization Technical Memorandum, the RI Report (Task 4), or as approved by U.S. EPA in the Work Plan/Field Sampling Plan.
TASK 6 - Remedial Action Objectives Technical Memorandum	With the draft RI Report (Task 4).
TASK 6 - Alternatives Screening Technical Memorandum	21 calendar days after receipt of U.S. EPA's comments on the Remedial Action Objectives Technical Memorandum.
TASK 6 - Comparative Analysis of Alternatives Technical Memorandum	21 calendar days after receipt of U.S. EPA's comments on the Alternatives Screening Technical Memorandum
Task 7 - FS Report	FS Report due 21 calendar days after receipt of U.S. EPA's comments on the Comparative Analysis of Alternatives Technical Memorandum. Final FS Report due 21 calendar days after receipt of U.S. EPA's modifications on the draft FS Report pursuant to Section 2 of the SOW and Section X of the AOC.

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<b>TASK 8: Monthly Progress Reports</b>	<b>On the 15<sup>th</sup> day of each month or the first business day after the 15<sup>th</sup> of the month commencing 30 calendar days after the effective date of the AOC.</b>
<b>Miscellaneous Documents</b>	<b>In accordance with the submittal date provided by RPM.</b>

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## EXHIBIT B PARTIAL LIST OF GUIDANCE

1. The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process. The majority of these guidance documents, and additional applicable guidance documents, may be downloaded from the following websites:

<http://www.epa.gov/superfund/pubs.htm> (General Superfund)  
<http://clu.in.org> (Site Characterization, Monitoring and Remediation)  
<http://www.epa.gov/ORD/NRMRL/Pubs> (Site Characterization and Monitoring)  
[http://www.epa.gov/quality/qa\\_docs.html#guidance](http://www.epa.gov/quality/qa_docs.html#guidance) (Quality Assurance)  
<http://www.epa.gov/superfund/programs/risk/toolthh.htm> (Risk Assessment - Human)  
<http://www.epa.gov/superfund/programs/risk/tooleco.htm> (Ecological Risk Assessment)  
<http://www.epa.gov/superfund/programs/lead> (Risk Assessment - Lead)  
<http://cfpub.epa.gov/ncea> (Risk Assessment - Exposure Factors/Other)  
<http://www.epa.gov/nepis/srch.htm> (General Publications Clearinghouse)  
<http://www.epa.gov/clariton/clhtml/pubtitle.html> (General Publications Clearinghouse)

2. The (revised) National Contingency Plan;
3. *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA*, U.S. EPA, Office of Emergency and Remedial Response, OSWER Directive No. 9355.3-01, EPA/540/G-89/004, October 1988.
4. *Conducting Remedial Investigations/Feasibility Studies for CERCLA Municipal Landfill Sites*, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-91/001, February 1991.
5. *Implementing Presumptive Remedies*, U.S. EPA, Office of Emergency and Remedial Response, EPA-540-R-97-029, October 1997.
6. *Presumptive Remedy for CERCLA Municipal Landfill Sites*, U.S. EPA, OSWER Directive No. 9355.0-49FS, EPA-540-F-93-035, September 1993.
7. *Presumptive Remedies: CERCLA Landfill Caps RI/FS Data Collection Guide*, U.S. EPA, OSWER 9355.3-18FS, EPA/540/F-95/009, August 1995.
8. *Presumptive Response Strategy and Ex-Situ Treatment Technologies for Contaminated Ground Water at CERCLA Sites*, OSWER 9283.1-12, EPA-540-R-96-023, October 1996.
9. *Field Analytical and Site Characterization Technologies Summary of Applications*, U.S. EPA, EPA-542-F-97-024, November 1997.
10. *CLU-IN Hazardous Waste Clean-Up Information World Wide Web Site*, U.S. EPA, EPA-542-F-99-002, February 1999.

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11. *Field Sampling and Analysis Technology Matrix and Reference Guide*, U.S. EPA, EPA-542-F-98-013, July 1998.
12. *Subsurface Characterization and Monitoring Techniques: A Desk Reference Guide, Volumes 1 and 2*, U.S. EPA, EPA/625/R-93/003, May 1993.
13. *Use of Airborne, Surface, and Borehole Geophysical Techniques at Contaminated Sites: A Reference Guide*, U.S. EPA, EPA/625/R-92/007(a,b), September 1993.
14. *Innovations in Site Characterization: Geophysical Investigation at Hazardous Waste Sites*, U.S. EPA, EPA-542-R-00-003, August 2000.
15. *Innovative Remediation and Site Characterization Technology Resources*, U.S. EPA, OSWER, EPA-542-F-01-026b, January 2001.
16. *Handbook of Suggested Practices for the Design and Installation of Ground-Water Monitoring Wells*, U.S. EPA, EPA/600/4-89/034, 1991.
17. *Ground-Water Sampling Guidelines for Superfund and RCRA Project Managers*, U.S. EPA, EPA-542-S-02-001, May 2002.
18. *Ground Water Issue: Low-Flow (Minimal Drawdown) Ground-Water Sampling Procedures*, U.S. EPA, EPA/540/S-95/504, April 1996.
19. *Superfund Ground Water Issue: Ground Water Sampling for Metals Analysis*, U.S. EPA, EPA/540/4-89/001, March 1989.
20. *Resources for Strategic Site Investigation and Monitoring*, U.S. EPA, OSWER, EPA-542-F-010030b, September 2001.
21. *Region 5 Framework for Monitored Natural Attenuation Decisions for Groundwater*, U.S. EPA Region 5, September 2000.
22. *Ground Water Issue: Suggested Operating Procedures for Aquifer Pumping Tests*, U.S. EPA, OSWER, EPA/540/S-93/503, February 1993.
23. *Technical Protocol for Evaluating Natural Attenuation of Chlorinated Solvents in Ground Water*, U.S. EPA, EPA/600/R-98/128, September 1998.
24. *Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action and Underground Storage Tank Sites*, U.S. EPA, OSWER Directive 9200.4-17P, April 21, 1999.
25. *Ground Water Issue: Fundamentals of Ground-Water Modeling*, U.S. EPA, OSWER, EPA/540/S-92/005, April 1992.



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26. *Assessment Framework for Ground-Water Model Applications*, U.S. EPA, OSWER Directive #9029.00, EPA-500-B-94-003, July 1994.
27. *Ground-Water Modeling Compendium - Second Edition: Model Fact Sheets, Descriptions, Applications and Cost Guidelines*, U.S. EPA, EPA-500-B-94-004, July 1994.
28. *A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents*, U.S. EPA, Office of Solid Waste and Emergency Response, OSWER Directive No. 9200.1-23P, EPA 540-R-98-031, July 1999.
29. *Region 5 Instructions on the Preparation of A Superfund Division Quality Assurance Project Plan Based on EPA QA/R-5, Revision 0*, U.S. EPA Region 5, June 2000.
30. *Guidance for the Data Quality Objectives Process (QA-G-4)*, U.S. EPA, EPA/600/R-96/055, August 2000.
31. *Guidance for the Data Quality Objectives Process for Hazardous Waste Sites (QA/G-4HW)*, U.S. EPA, EPA/600/R-00/007, January 2000.
32. *Guidance for the Preparation of Standard Operating Procedures (QA-G-6)*, U.S. EPA, EPA/240/B-01/004, March 2001.
33. *EPA Requirements for Quality Management Plans (QA/R-2)*, U.S. EPA, EPA/240/B-01/002, March 2001.
34. *EPA Requirements for QA Project Plans (QA/R-5)*, U.S. EPA, EPA/240/B-01/003, March 2001.
35. *Guidance for Quality Assurance Project Plans (QA/G-5)*, U.S. EPA, EPA/600/R-98/018, February 1998.
36. *Users Guide to the EPA Contract Laboratory Program*, U.S. EPA, Sample Management Office, OSWER Directive No. 9240.0-01D, January 1991.
37. *Technical Guidance Document: Quality Assurance and Quality Control for Waste Containment Facilities*, U.S. EPA, EPA/600/R-93/182, 1993.
38. *Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part A)*, U.S. EPA, EPA/540/1-89/002, December 1989.
39. *Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part B, Development of Risk-Based Preliminary Remediation Goals)*, U.S. EPA, EPA/540/R-92/003, OSWER Publication 9285.7-01B, December 1991.
40. *Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part C - Risk Evaluation of Remedial Alternatives)*, U.S. EPA, Office of Emergency and Remedial Response, Publication 9285.7-01C, October, 1991.

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41. *Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part D - Standardized Planning, Reporting, and Review of Superfund Risk Assessments)*, U.S. EPA, Office of Emergency and Remedial Response, Publication 9285.7-47, December 2001.
42. *Risk Assessment Guidance for Superfund: Volume III - Part A, Process for Conducting Probabilistic Risk Assessment*, U.S. EPA, OSWER Publication 9285.7-45, EPA-540-R-02-002, December 2001.
43. *Policy for Use of Probabilistic in Risk Assessment at the U.S. Environmental Protection Agency*, U.S. EPA, Office of Research and Development, 1997.
44. *Human Health Evaluation Manual, Supplemental Guidance: Standard Default Exposure Factors*, U.S. EPA, OSWER Directive 9285.6-03, March 25, 1991.
45. *Exposure Factors Handbook*, Volumes I, II, and III, U.S. EPA, EPA/600/P-95/002Fa,b,c, August 1997.
46. *Supplemental Guidance to RAGS: Calculating the Concentration Term*, U.S. EPA, OSWER Publication 9285.7-08I, May 1992.
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51. *Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions*, U.S. EPA, OSWER Directive 9355.0-30, April 22, 1991.
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55. *Soil Screening Guidance: User's Guide*, U.S. EPA, OSWER Publication 9355.4-23, July 1996.
56. *Soil Screening Guidance: Technical Background Document*, U.S. EPA, EPA/540/R95/128, May 1996.
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63. *Guidance for Data Usability in Risk Assessment (Quick Reference Fact Sheet)*, OSWER 9285.7-05FS, September, 1990.
64. *Guidance for Data Usability in Risk Assessment (Part A)*, U.S. EPA, Office of Emergency and Remedial Response, Publication 9285.7-09A, April 1992.
65. *Guide for Conducting Treatability Studies Under CERCLA*, U.S. EPA, EPA/540/R-92/071a, October 1992.
66. *CERCLA Compliance with Other Laws Manual, Two Volumes*, U.S. EPA, Office of Emergency and Remedial Response, OSWER Directive No. 9234.1-01 and -02, EPA/540/G-89/009, August 1988.

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70. *Pump-and-Treat Ground-Water Remediation A Guide for Decision Makers and Practitioners*, U.S. EPA, EPA/625/R-95/005, July 1996.
71. *Ground-Water Treatment Technology Resource Guide*, U.S. EPA, OSWER, EPA-542-B-94/009, September 1994.
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74. *Reuse of CERCLA Landfill and Containment Sites*, U.S. EPA, OSWER 9375.3-05P, EPA-540-F-99-015, September 1999.
75. *Reusing Superfund Sites: Commercial Use Where Waste is Left on Site*, U.S. EPA, OSWER 9230.0-100, February 2002.
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78. *Engineering Bulletin: Landfill Covers*, U.S. EPA, EPA/540/S-93/500, 1993.
79. *Principles for Managing Contaminated Sediment Risks at Hazardous Waste Sites*, U.S. EPA OSWER Directive 9285.6-08, February 12, 2002.
80. *Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups*, U.S. EPA, OSWER 9355.0-74FS-P, EPA/540-F-00-005, September 29, 2000.
81. *Health and Safety Requirements of Employees Employed in Field Activities*, U.S. EPA, Office of Emergency and Remedial Response, EPA Order No. 1440.2, July 12, 1981.
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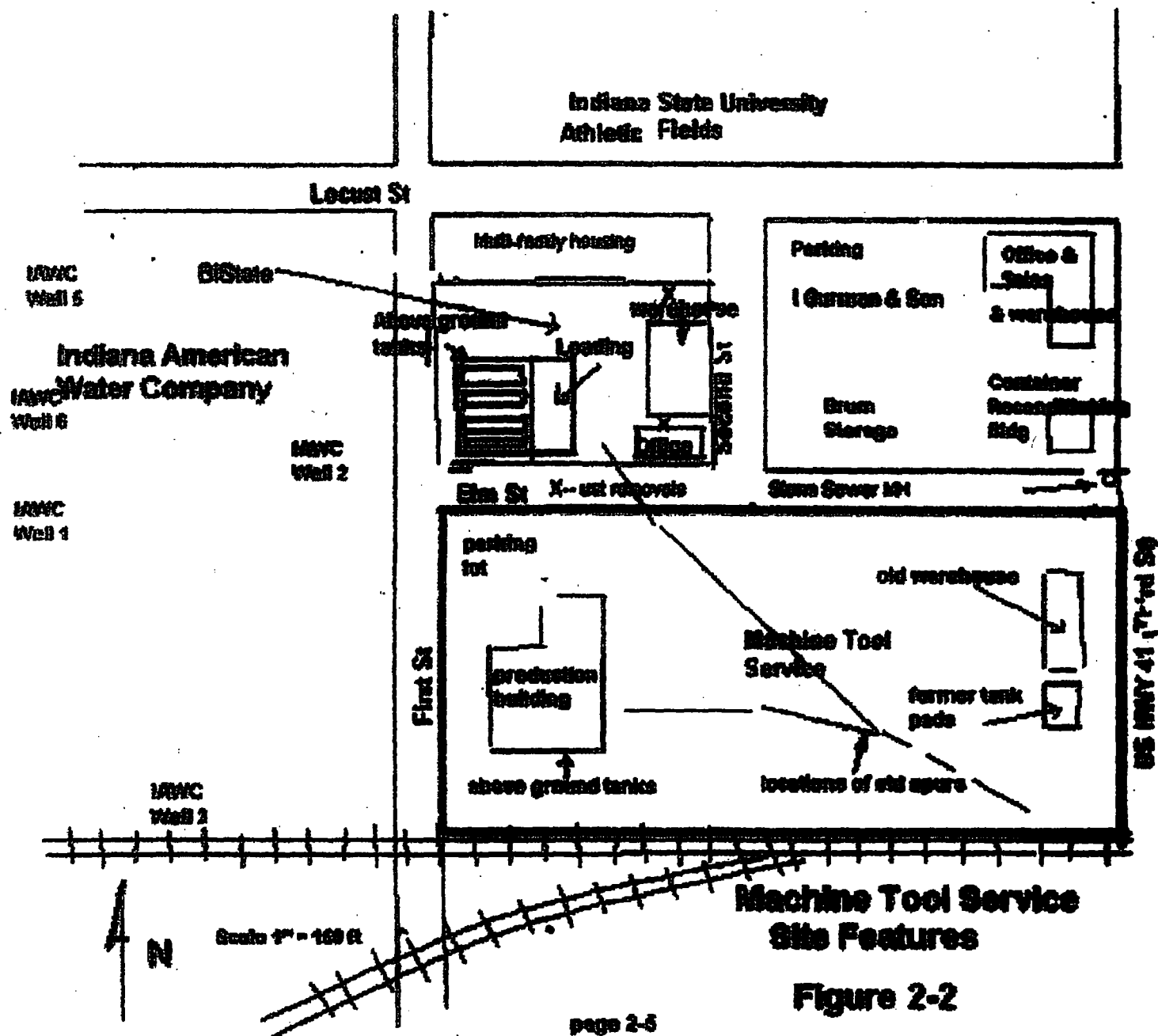


Figure 2-2

## **Enclosure #4**

### **ELM STREET GROUNDWATER CONTAMINATION SITE**

#### **PRPs List**

Alex C. Intermill  
Bose McKinney & Evans  
2700 First Indiana Plaza  
135 N Pennsylvania Street  
Indianapolis, Indiana 46204

Lawrence A. McHugh  
600 1<sup>st</sup> Source Bank Center  
100 North Michigan  
South Bend, Indiana 46601-1632

Robin Lampkin-Isabel  
Senior Group Counsel  
Law Department  
Ashland, Inc.  
P.O. Box 2219  
Columbus, Ohio 43216

G. Michael Schopmeyer  
Kahn, Dees, Donovan & Kahn, LLP  
501 Main Street, Suite 305  
Evansville, Indiana 47735-3646

URGENT LEGAL MATTER —  
PROMPT REPLY NECESSARY

SR - 6J

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Robin Lampkin-Isabel  
Senior Group Counsel  
Law Department  
Ashland, Inc.  
P.O. Box 2219  
Columbus, OH 43216

Re: Ashland, Inc. - Special Notice Letter for Elm Street Groundwater Contamination Site,  
Terre Haute, Vigo County, Indiana

Dear Ms. Lampkin-Isabel:

The United States Environmental Protection Agency ("U.S. EPA") has undertaken response actions at the above referenced Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA"). U.S. EPA has documented the release or threatened release of hazardous substances, pollutants, and contaminants at or from the Site. U.S. EPA believes the following response activities are necessary at the Site: 1) a remedial investigation ("RI") to determine the nature and extent of the contamination at the Site; and 2) a feasibility study to determine and evaluate alternatives for remedial action at the Site ("FS").

This letter follows a general notice letter we issued on April 14, 2005 and a previous special notice letter dated August 26, 2005. In December of 2005, you declined to conduct the RI/FS at the Site, and on February 10, 2006, we terminated initial negotiations for a consent agreement to complete the RI/FS. On March 7, 2007, U.S. EPA placed the Site on the national priority list (NPL). Enclosed is a copy of the federal register notice documenting the Site listing.

This letter notifies you that a second 60 day period of formal negotiations with the U.S. EPA automatically begins with this letter whereby you and other Potentially Responsible Parties are invited to enter into negotiations with U.S. EPA to conduct the RI/FS at the Site. This letter notifies you that a formal demand for reimbursement of costs that have been incurred at this Site by the U.S. EPA in response to the health and environmental concerns at the Site will be forthcoming. This letter also provides general and site-specific information to assist you in these negotiations.



## **NOTICE OF POTENTIAL LIABILITY**

As indicated in the notice letters previously sent regarding this Site, U.S. EPA has information indicating that you may be a Potentially Responsible Party ("PRP") under Section 107 of CERCLA, with respect to this Site. Under Section 107 of CERCLA, responsible parties include current owners and operators of the Site and former owners and operators of the Site at the time of disposal of hazardous substances, as well as persons who owned or possessed hazardous substances and arranged for disposal, treatment, or transportation of such hazardous substances and persons who accepted hazardous substances for transportation for disposal or treatment to the Site selected by such transporter.

U.S. EPA may perform response actions in response to a release or threatened release of hazardous substances, pollutants or contaminants pursuant to Section 104 of CERCLA. Under Section 107 of CERCLA, U.S. EPA can recover those response costs from responsible parties. Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, as amended (RCRA), and other laws, U.S. EPA can order, or ask a court to order, responsible parties, to conduct response actions at a site. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$25,000 per day, under Section 106(b) of CERCLA, or imposition of treble damages, under Section 107(c)(3) of CERCLA. In addition, responsible parties may be liable for damages to natural resources at a Site.

## **SPECIAL NOTICE AND NEGOTIATION MORATORIUM**

Under Section 122 of CERCLA and general settlement authority, U.S. EPA can enter into settlement agreements with PRPs that require PRPs to conduct response under Section 107 of CERCLA. U.S. EPA has determined that use of the Section 122(e) special notice procedures specified in CERCLA may facilitate a settlement between U.S. EPA and PRPs for this Site. Therefore, under Section 122 of CERCLA, this letter triggers a 60-day moratorium on certain U.S. EPA response activities at the Site. During this 60-day period, the PRPs, including you, are invited to participate in formal negotiations with U.S. EPA. You are also encouraged to voluntarily negotiate a settlement providing for the PRPs, including yourself, to conduct or finance the response activities required at the Site. The 60-day negotiation period ends 60 days after your receipt of this letter. The 60-day negotiation moratorium will be extended for an additional 30 days if PRPs provide U.S. EPA with a good faith offer to conduct or finance the RI/FS, on or before the end of the initial 60-day period. If settlement is reached between U.S. EPA and the PRPs, the settlement will be embodied in an administrative order on consent for RI/FS.

## **FUTURE RESPONSE ACTIONS**

U.S. EPA plans to conduct the following CERCLA activities at the Site:

1. Remedial Investigation/Feasibility Study on or about **April 30, 2007**.

## **WORK PLAN AND DRAFT CONSENT ORDER**

A copy of U.S. EPA's draft administrative order on consent ("AOC") and statement of work ("SOW") are attached. This is provided to assist you and other PRPs in developing a good faith offer for conducting the RI/FS.

### **GOOD FAITH OFFER**

As indicated, the 60-day negotiation moratorium triggered by this letter may be extended for 30 days if the PRPs submit a good faith offer to U.S. EPA. An offer to conduct or finance the RI/FS must include a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and must include the following elements:

1. A statement of willingness by the PRPs to conduct or finance the RI/FS which is consistent with U.S. EPA's statement of work and draft administrative order and provides a sufficient basis for further negotiations.
2. A demonstration of the PRPs technical capability to carry out the RI/FS including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s).
3. A demonstration of the PRPs' capability to finance the RI/FS.
4. A statement of willingness by the PRPs to reimburse U.S. EPA for costs incurred in overseeing the PRPs' conduct of the RI/FS.
5. The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

If your offer contemplates modifications to the AOC or SOW, you must make revisions to the enclosed proposed AOC and SOW and submit this version to U.S. EPA prior to the expiration of the 60 day negotiation moratorium. Your response should provide reasons for or the basis of such modifications to the proposed AOC and SOW. Major modifications to the AOC and/or SOW may not be considered a good faith offer by U.S. EPA.

### **INITIAL CONFERENCE**

To further facilitate your and other PRPs' ability to present a "good faith offer" within the 60-day time limit, U.S. EPA is organizing an initial settlement conference at the following time and place:

**Time & Date:**                      **9 A.M. Central Time**  
**October 16, 2007**

**Place:** 77 West Jackson Boulevard  
Chicago, IL 60604

### **DEMAND FOR PAYMENT**

In accordance with CERCLA, U.S. EPA already has undertaken certain actions and incurred certain costs in response to conditions at the Site. Such costs include, but are not limited to, expenditures for investigation, planning, response, oversight, and enforcement activities.

As soon as practicable, U.S. EPA will send Respondent(s) a bill for "past response costs" at the Site. U.S. EPA's bill will include an Itemized Cost Summary. "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site. The Agency anticipates expending additional funds for response activities at the Site under the authority of CERCLA and other laws. In accordance with Section 107(a) of CERCLA, demand is also hereby made under these authorities for payment of all future costs that U.S. EPA may accrue in regard to the Site.

As indicated above U.S. EPA anticipates expending additional funds for the RI/FS. Whether U.S. EPA funds the entire RI/FS, or simply incurs costs by overseeing the parties conducting these response activities, you are potentially liable for these expenditures plus interest.

### **RESOURCES AND INFORMATION FOR SMALL BUSINESSES**

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at [www.epa.gov](http://www.epa.gov). In addition, the EPA Small Business Ombudsman may be contacted at [www.epa.gov/sbo](http://www.epa.gov/sbo). Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is enclosed with this letter.]

### **ABILITY TO PAY - FUTURE FINANCIAL REVIEW**

If your company wishes to settle, but would face a severe financial hardship by remitting the full payment amount, you may request that the U.S. EPA review your financial ability to pay. Under U.S. EPA policy, it is possible in appropriate circumstances for the payment to be made in installments. This may be considered as part of U.S. EPA's financial review. To process a claim of financial hardship, the U.S. EPA will require you to substantiate that claim by submitting

detailed financial documentation. A complete description of the U.S. EPA's financial review process is available upon request.

### **PRP STEERING COMMITTEE**

U.S. EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Establishing a manageable group is critical for successful negotiations with U.S. EPA. Alternatively, U.S. EPA encourages each PRP to select one person from its company or organization who will represent its interests.

### **ADMINISTRATIVE RECORD**

Pursuant to CERCLA Section 113(k), U.S. EPA must establish an administrative record that contains documents that form the basis of U.S. EPA's decision on the selection of a response action for a site. The administrative record files will be available to the public for inspection and comment at:

**The Superfund Records Center  
77 W. Jackson Blvd.  
Chicago, Illinois**

### **NATURAL RESOURCE TRUSTEE NOTIFICATION**

By a copy of this letter, U.S. EPA is notifying the State of Indiana and the Natural Resources Trustees, in accordance with Section 122(j) of CERCLA, of its intent to enter into negotiations concerning the conduct of an RI/FS at the Site, and is also encouraging them to consider participation in such negotiations.

### **PRP RESPONSE AND U.S. EPA CONTACT PERSON**

Please contact U.S. EPA by October 10, 2007, to indicate your willingness to participate in negotiations at this Site. You have 60 calendar days from this notice to provide U.S. EPA with a good faith offer, in writing, demonstrating your willingness to perform the RI/FS. You may respond individually or through a steering committee if such a committee has been formed. If U.S. EPA does not receive a timely response, U.S. EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities. Your response to this notice letter should be sent to:

**Erik Olson  
Associate Regional Counsel, C-14J  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590**

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final U.S. EPA positions on any matter set forth herein.

If you have questions of a technical nature, please contact Howard Caine, Remedial Project Manager at (312)353-9685. For legal questions contact, Rich Murawski, Associate Regional Counsel, at (312)886-6721.

Sincerely,

Wendy L. Carney, Chief  
Remedial Response Branch #1

Enclosures:           1. NPL Elm Street Site Listing Federal Register Notice  
                          2. Administrative Order on Consent  
                          3. Statement of Work

cc:           Michael Chezik  
              U.S. Department of Interior  
              200 Chestnut Street, Rm 244  
              Philadelphia, PA 19106-2904

Mr. Bruce Palen  
Assistant Commissioner for Office of Environmental Response  
Indiana Department of Environmental Management  
100 North Senate, Room N1225  
Indianapolis, Indiana 46206-6015

□

bcc: **Richard Murawski, C-14J**  
**Erik Olson, C-14J**  
**Fouad Dababneh, SR-6J**  
**Howard Caine, SR-6J**

**BOSE  
McKINNEY  
& EVANS LLP**

ATTORNEYS AT LAW

**Alex C. Intermill**

Downtown Office

Direct Dial (317) 684-5302

Direct Fax (317) 223-0302

E-Mail: AIntermill@boselaw.com

November 20, 2007

**Via E-mail and UPS Overnight Delivery**

Erik Olson, Esq.  
Associate Regional Counsel, C-14J  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604-3511

Re: SR-6J – Machine Tool Service, Inc.  
Special Notice Letter for Elm Street Groundwater Contamination Site  
Terre Haute, Vigo County, Indiana

Dear Mr. Olson:

Our law firm represents Machine Tool Service, Inc. ("MTS") with respect to the above-referenced matter. I am in receipt of the United States Environmental Protection Agency's ("EPA") letter dated November 5, 2007, concerning a proposed remedial investigation and feasibility study ("RI/FS") for the Elm Street Groundwater Contamination Site ("Site"). While we are still in the process of evaluating the proposed RI/FS, MTS is willing to participate in negotiations with EPA regarding the Site.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Alex C. Intermill

cc: Mr. Jim Perry  
Richard S. VanRheenen, Esq.

1029856

U.S. ENVIRONMENTAL  
PROTECTION AGENCY

NOV 21 2007

OFFICE OF REGIONAL  
COUNSEL



**URGENT LEGAL MATTER —  
PROMPT REPLY NECESSARY**

**SR - 6J**

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**Lawrence A. McHugh**

**600 1<sup>st</sup> Source Bank Center**  
100 North Michigan  
South Bend, IN 46601-1632

Re: Consolidated Recycling, Inc. - Special Notice Letter for Elm Street Groundwater Contamination Site, Terre Haute, Vigo County, Indiana

Dear Mr. McHugh:

The United States Environmental Protection Agency ("U.S. EPA") has undertaken response actions at the above referenced Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA"). U.S. EPA has documented the release or threatened release of hazardous substances, pollutants, and contaminants at or from the Site. U.S. EPA believes the following response activities are necessary at the Site: 1) a remedial investigation ("RI") to determine the nature and extent of the contamination at the Site; and 2) a feasibility study to determine and evaluate alternatives for remedial action at the Site ("FS").

This letter follows a general notice letter we issued on April 14, 2005 and a previous special notice letter dated August 26, 2005. In December of 2005, you declined to conduct the RI/FS at the Site, and on February 10, 2006, we terminated initial negotiations for a consent agreement to complete the RI/FS. On March 7, 2007, U.S. EPA placed the Site on the national priority list (NPL). Enclosed is a copy of the federal register notice documenting the Site listing. This letter notifies you that a second 60 day period of formal negotiations with the U.S. EPA automatically begins with this letter whereby you and other Potentially Responsible Parties are invited to enter into negotiations with U.S. EPA to conduct the RI/FS at the Site. This letter notifies you that a formal demand for reimbursement of costs that have been incurred at this Site by the U.S. EPA in response to the health and environmental concerns at the Site will be forthcoming. This letter also provides general and site-specific information to assist you in these negotiations.

**NOTICE OF POTENTIAL LIABILITY**

As indicated in the notice letters previously sent regarding this Site, U.S. EPA has information indicating that you may be a Potentially Responsible Party ("PRP") under Section 107 of CERCLA, with respect to this Site. Under Section 107 of CERCLA, responsible parties include current owners and operators of the Site and former owners and operators of the Site at the time of disposal of hazardous substances, as well as persons who owned or possessed hazardous substances and arranged for disposal, treatment, or transportation of such hazardous substances and persons who accepted hazardous substances for transportation for disposal or treatment to the Site selected by such transporter.

U.S. EPA may perform response actions in response to a release or threatened release of hazardous substances, pollutants or contaminants pursuant to Section 104 of CERCLA. Under Section 107 of CERCLA, U.S. EPA can recover those response costs from responsible parties. Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, as amended (RCRA), and other laws, U.S. EPA can order, or ask a court to order, responsible parties, to conduct response actions at a site. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$25,000 per day, under Section 106(b) of CERCLA, or imposition of treble damages, under Section 107(c)(3) of CERCLA. In addition, responsible parties may be liable for damages to natural resources at a Site.

**SPECIAL NOTICE AND NEGOTIATION MORATORIUM**

Under Section 122 of CERCLA and general settlement authority, U.S. EPA can enter into settlement agreements with PRPs that require PRPs to conduct response under Section 107 of CERCLA. U.S. EPA has determined that use of the Section 122(e) special notice procedures specified in CERCLA may facilitate a settlement between U.S. EPA and PRPs for this Site. Therefore, under Section 122 of CERCLA, this letter triggers a 60-day moratorium on certain U.S. EPA response activities at the Site. During this 60-day period, the PRPs, including you, are invited to participate in formal negotiations with U.S. EPA. You are also encouraged to voluntarily negotiate a settlement providing for the PRPs, including yourself, to conduct or finance the response activities required at the Site. The 60-day negotiation period ends 60 days after your receipt of this letter. The 60-day negotiation moratorium will be extended for an additional 30 days if PRPs provide U.S. EPA with a good faith offer to conduct or finance the RI/FS, on or before the end of the initial 60-day period. If settlement is reached between U.S. EPA and the PRPs, the settlement will be embodied in an administrative order on consent for RI/FS.

**FUTURE RESPONSE ACTIONS**

U.S. EPA plans to conduct the following CERCLA activities at the Site:

1. Remedial Investigation/Feasibility Study on or about April 30, 2007.

## WORK PLAN AND DRAFT CONSENT ORDER

A copy of U.S. EPA's draft administrative order on consent ("AOC") and statement of work ("SOW") are attached. This is provided to assist you and other PRPs in developing a good faith offer for conducting the RI/FS.

### GOOD FAITH OFFER

As indicated, the 60-day negotiation moratorium triggered by this letter may be extended for 30 days if the PRPs submit a good faith offer to U.S. EPA. An offer to conduct or finance the RI/FS must include a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and must include the following elements:

1. A statement of willingness by the PRPs to conduct or finance the RI/FS which is consistent with U.S. EPA's statement of work and draft administrative order and provides a sufficient basis for further negotiations.
2. A demonstration of the PRPs technical capability to carry out the RI/FS including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s).
3. A demonstration of the PRPs' capability to finance the RI/FS.
4. A statement of willingness by the PRPs to reimburse U.S. EPA for costs incurred in overseeing the PRPs' conduct of the RI/FS.
5. The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

If your offer contemplates modifications to the AOC or SOW, you must make revisions to the enclosed proposed AOC and SOW and submit this version to U.S. EPA prior to the expiration of the 60 day negotiation moratorium. Your response should provide reasons for or the basis of such modifications to the proposed AOC and SOW. Major modifications to the AOC and/or SOW may not be considered a good faith offer by U.S. EPA.

### INITIAL CONFERENCE

To further facilitate your and other PRPs' ability to present a "good faith offer" within the 60-day time limit, U.S. EPA is organizing an initial settlement conference at the following time and place:

	<b>Time &amp; Date:</b>	<b>9 A.M. Central Time</b>
	<b>October 16, 2007</b>	
<b>Place:</b>	<b>77 West Jackson Boulevard</b>	
	<b>Chicago, IL 60604</b>	

### DEMAND FOR PAYMENT

In accordance with CERCLA, U.S. EPA already has undertaken certain actions and incurred certain costs in response to conditions at the Site. Such costs include, but are not limited to, expenditures for investigation, planning, response, oversight, and enforcement activities.

As soon as practicable, U.S. EPA will send Respondent(s) a bill for "past response costs" at the Site. U.S. EPA's bill will include an Itemized Cost Summary. "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site. The Agency anticipates expending additional funds for response activities at the Site under the authority of CERCLA and other laws. In accordance with Section 107(a) of CERCLA, demand is also hereby made under these authorities for payment of all future costs that U.S. EPA may accrue in regard to the Site.

As indicated above U.S. EPA anticipates expending additional funds for the RI/FS. Whether U.S. EPA funds the entire RI/FS, or simply incurs costs by overseeing the parties conducting these response activities, you are potentially liable for these expenditures plus interest.

### RESOURCES AND INFORMATION FOR SMALL BUSINESSES

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm>

and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

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U.S. EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Establishing a manageable group is critical for successful negotiations with U.S. EPA. Alternatively, U.S. EPA encourages each PRP to select one person from its company or organization who will represent its interests.

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77 W. Jackson Blvd.  
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By a copy of this letter, U.S. EPA is notifying the State of Indiana and the Natural Resources Trustees, in accordance with Section 122(j) of CERCLA, of its intent to enter into negotiations concerning the conduct of an RI/FS at the Site, and is also encouraging them to consider participation in such negotiations.

## **PRP RESPONSE AND U.S. EPA CONTACT PERSON**

Please contact U.S. EPA by October 10, 2007, to indicate your willingness to participate in negotiations at this Site. You have 60 calendar days from this notice to provide U.S. EPA with a good faith offer, in writing, demonstrating your willingness to perform the RI/FS. You may respond individually or through a steering committee if such a committee has been formed. If U.S. EPA does not receive a timely response, U.S. EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities.

Your response to this notice letter should be sent to:

Erik Olson  
Associate Regional Counsel, C-14J  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

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Sincerely,

Wendy L. Carney, Chief  
Remedial Response Branch #1

Enclosures:       1. NPL Elm Street Site Listing Federal Register Notice  
                      2. Administrative Order on Consent  
                      3. Statement of Work

cc:           Michael Chezik  
              U.S. Department of Interior  
              200 Chestnut Street, Rm 244  
              Philadelphia, PA 19106-2904

Mr. Bruce Palen  
Assistant Commissioner for Office of Environmental Response

Indiana Department of Environmental Management  
100 North Senate, Room N1225  
Indianapolis, Indiana 46206-6015



bcc: **Richard Murawski, C-14J**  
**Erik Olson, C-14J**  
**Fouad Dababneh, SR-6J**  
**Howard Caine, SR-6J**

URGENT LEGAL MATTER —  
PROMPT REPLY NECESSARY

SR - 6J

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

G. Michael Schopmeyer  
Kahn, Dees, Donovan & Kahn, LLP  
501 Main Street, Suite 305  
Evansville, IN 47735-3646

Re: Gurman Container and Supply Corporation - Special Notice Letter for Elm Street  
Groundwater Contamination Site, Terre Haute, Vigo County, Indiana

Dear Mr. Schopmeyer:

The United States Environmental Protection Agency ("U.S. EPA") has undertaken response actions at the above referenced Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA"). U.S. EPA has documented the release or threatened release of hazardous substances, pollutants, and contaminants at or from the Site. U.S. EPA believes the following response activities are necessary at the Site: 1) a remedial investigation ("RI") to determine the nature and extent of the contamination at the Site; and 2) a feasibility study to determine and evaluate alternatives for remedial action at the Site ("FS").

This letter follows a general notice letter we issued on April 14, 2005 and a previous special notice letter dated August 26, 2005. In December of 2005, you declined to conduct the RI/FS at the Site, and on February 10, 2006, we terminated initial negotiations for a consent agreement to complete the RI/FS. On March 7, 2007, U.S. EPA placed the Site on the national priority list (NPL). Enclosed is a copy of the federal register notice documenting the Site listing. This letter notifies you that a second 60 day period of formal negotiations with the U.S. EPA automatically begins with this letter whereby you and other Potentially Responsible Parties are invited to enter into negotiations with U.S. EPA to conduct the RI/FS at the Site. This letter notifies you that a formal demand for reimbursement of costs that have been incurred at this Site by the U.S. EPA in response to the health and environmental concerns at the Site will be forthcoming. This letter also provides general and site-specific information to assist you in these negotiations.

**NOTICE OF POTENTIAL LIABILITY**

As indicated in the notice letters previously sent regarding this Site, U.S. EPA has information indicating that you may be a Potentially Responsible Party ("PRP") under Section 107 of CERCLA, with respect to this Site. Under Section 107 of CERCLA, responsible parties include current owners and operators of the Site and former owners and operators of the Site at the time of disposal of hazardous substances, as well as persons who owned or possessed hazardous substances and arranged for disposal, treatment, or transportation of such hazardous substances and persons who accepted hazardous substances for transportation for disposal or treatment to the Site selected by such transporter.

U.S. EPA may perform response actions in response to a release or threatened release of hazardous substances, pollutants or contaminants pursuant to Section 104 of CERCLA. Under Section 107 of CERCLA, U.S. EPA can recover those response costs from responsible parties. Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, as amended (RCRA), and other laws, U.S. EPA can order, or ask a court to order, responsible parties, to conduct response actions at a site. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$25,000 per day, under Section 106(b) of CERCLA, or imposition of treble damages, under Section 107(c)(3) of CERCLA. In addition, responsible parties may be liable for damages to natural resources at a Site.

### **SPECIAL NOTICE AND NEGOTIATION MORATORIUM**

Under Section 122 of CERCLA and general settlement authority, U.S. EPA can enter into settlement agreements with PRPs that require PRPs to conduct response under Section 107 of CERCLA. U.S. EPA has determined that use of the Section 122(e) special notice procedures specified in CERCLA may facilitate a settlement between U.S. EPA and PRPs for this Site. Therefore, under Section 122 of CERCLA, this letter triggers a 60-day moratorium on certain U.S. EPA response activities at the Site. During this 60-day period, the PRPs, including you, are invited to participate in formal negotiations with U.S. EPA. You are also encouraged to voluntarily negotiate a settlement providing for the PRPs, including yourself, to conduct or finance the response activities required at the Site. The 60-day negotiation period ends 60 days after your receipt of this letter. The 60-day negotiation moratorium will be extended for an additional 30 days if PRPs provide U.S. EPA with a good faith offer to conduct or finance the RI/FS, on or before the end of the initial 60-day period. If settlement is reached between U.S. EPA and the PRPs, the settlement will be embodied in an administrative order on consent for RI/FS.

### **FUTURE RESPONSE ACTIONS**

U.S. EPA plans to conduct the following CERCLA activities at the Site:

1. Remedial Investigation/Feasibility Study on or about **April 30, 2007**.



## **WORK PLAN AND DRAFT CONSENT ORDER**

A copy of U.S. EPA's draft administrative order on consent ("AOC") and statement of work ("SOW") are attached. This is provided to assist you and other PRPs in developing a good faith offer for conducting the RI/FS.

### **GOOD FAITH OFFER**

As indicated, the 60-day negotiation moratorium triggered by this letter may be extended for 30 days if the PRPs submit a good faith offer to U.S. EPA. An offer to conduct or finance the RI/FS must include a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and must include the following elements:

1. A statement of willingness by the PRPs to conduct or finance the RI/FS which is consistent with U.S. EPA's statement of work and draft administrative order and provides a sufficient basis for further negotiations.
2. A demonstration of the PRPs technical capability to carry out the RI/FS including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s).
3. A demonstration of the PRPs' capability to finance the RI/FS.
4. A statement of willingness by the PRPs to reimburse U.S. EPA for costs incurred in overseeing the PRPs' conduct of the RI/FS.
5. The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

If your offer contemplates modifications to the AOC or SOW, you must make revisions to the enclosed proposed AOC and SOW and submit this version to U.S. EPA prior to the expiration of the 60 day negotiation moratorium. Your response should provide reasons for or the basis of such modifications to the proposed AOC and SOW. Major modifications to the AOC and/or SOW may not be considered a good faith offer by U.S. EPA.

### **INITIAL CONFERENCE**

To further facilitate your and other PRPs' ability to present a "good faith offer" within the 60-day time limit, U.S. EPA is organizing an initial settlement conference at the following time and place:

**Time & Date:** 9 A.M. Central Time  
October 16, 2007

**Place:** 77 West Jackson Boulevard

**Chicago, IL 60604**

## **DEMAND FOR PAYMENT**

In accordance with CERCLA, U.S. EPA already has undertaken certain actions and incurred certain costs in response to conditions at the Site. Such costs include, but are not limited to, expenditures for investigation, planning, response, oversight, and enforcement activities.

As soon as practicable, U.S. EPA will send Respondent(s) a bill for "past response costs" at the Site. U.S. EPA's bill will include an Itemized Cost Summary. "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site. The Agency anticipates expending additional funds for response activities at the Site under the authority of CERCLA and other laws. In accordance with Section 107(a) of CERCLA, demand is also hereby made under these authorities for payment of all future costs that U.S. EPA may accrue in regard to the Site.

As indicated above U.S. EPA anticipates expending additional funds for the RI/FS. Whether U.S. EPA funds the entire RI/FS, or simply incurs costs by overseeing the parties conducting these response activities, you are potentially liable for these expenditures plus interest.

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As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

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### **PRP RESPONSE AND U.S. EPA CONTACT PERSON**

Please contact U.S. EPA by October 10, 2007, to indicate your willingness to participate in negotiations at this Site. You have 60 calendar days from this notice to provide U.S. EPA with a good faith offer, in writing, demonstrating your willingness to perform the RI/FS. You may respond individually or through a steering committee if such a committee has been formed. If U.S. EPA does not receive a timely response, U.S. EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities. Your response to this notice letter should be sent to:

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Sincerely,

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cc:           Michael Chezik  
              U.S. Department of Interior  
              200 Chestnut Street, Rm 244  
              Philadelphia, PA 19106-2904

Mr. Bruce Palen  
Assistant Commissioner for Office of Environmental Response  
Indiana Department of Environmental Management  
100 North Senate, Room N1225  
Indianapolis, Indiana 46206-6015

□

bcc: **Richard Murawski, C-14J**  
**Erik Olson, C-14J**  
**Fouad Dababneh, SR-6J**  
**Howard Caine, SR-6J**

URGENT LEGAL MATTER —  
PROMPT REPLY NECESSARY

SR - 6J

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Alex C. Intermill  
Bose McKinney & Evans  
2700 First Indiana Plaza  
135 North Pennsylvania Street  
Indianapolis, IN 46204

Re: Machine Tool Service, Inc. - Special Notice Letter for Elm Street Groundwater  
Contamination Site, Terre Haute, Vigo County, Indiana

Dear Mr. Intermill:

The United States Environmental Protection Agency ("U.S. EPA") has undertaken response actions at the above referenced Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA"). U.S. EPA has documented the release or threatened release of hazardous substances, pollutants, and contaminants at or from the Site. U.S. EPA believes the following response activities are necessary at the Site: 1) a remedial investigation ("RI") to determine the nature and extent of the contamination at the Site; and 2) a feasibility study to determine and evaluate alternatives for remedial action at the Site ("FS").

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U.S. EPA may perform response actions in response to a release or threatened release of hazardous substances, pollutants or contaminants pursuant to Section 104 of CERCLA. Under Section 107 of CERCLA, U.S. EPA can recover those response costs from responsible parties. Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, as amended (RCRA), and other laws, U.S. EPA can order, or ask a court to order, responsible parties, to conduct response actions at a site. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$25,000 per day, under Section 106(b) of CERCLA, or imposition of treble damages, under Section 107(c)(3) of CERCLA. In addition, responsible parties may be liable for damages to natural resources at a Site.

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**Time & Date:** 9 A.M. Central Time  
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**Place:** 77 West Jackson Boulevard



**Chicago, IL 60604**

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Your response to this notice letter should be sent to:

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U.S. Environmental Protection Agency  
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Sincerely,

Wendy L. Carney, Chief  
Remedial Response Branch #1

Enclosures:           1. NPL Elm Street Site Listing Federal Register Notice  
                          2. Administrative Order on Consent  
                          3. Statement of Work

cc:           Michael Chezik  
              U.S. Department of Interior  
              200 Chestnut Street, Rm 244  
              Philadelphia, PA 19106-2904

Mr. Bruce Palen  
Assistant Commissioner for Office of Environmental Response  
Indiana Department of Environmental Management  
100 North Senate, Room N1225  
Indianapolis, Indiana 46206-6015

□

bcc: **Richard Murawski, C-14J**  
**Erik Olson, C-14J**  
**Fouad Dababneh, SR-6J**  
**Howard Caine, SR-6J**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-2006-0755, EPA-HQ-SFUND-2006-0758, EPA-HQ-SFUND-2006-0760, EPA-HQ-SFUND-2006-0761, EPA-HQ-SFUND-2006-0762; FRL-8283-7]

RIN 2050-AD75

### National Priorities List, Final Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds five sites to the General Superfund Section of the NPL.

**EFFECTIVE DATE:** The effective date for this amendment to the NCP is April 6, 2007.

**ADDRESSES:** For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, "Availability of Information to the Public" in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Terry Jeng, phone (703) 603-8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204P); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

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#### I. Background

##### A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99-499, 100 Stat. 1613 *et seq.*

##### B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

##### C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section

105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. EPA's role is less extensive than at other sites.

#### *D. How Are Sites Listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutant or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Pursuant to 42 U.S.C 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated

by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

#### *E. What Happens to Sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions \* \* \*." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

#### *F. Does the NPL Define the Boundaries of Sites?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue.

That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a Remedial Investigation/Feasibility Study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are

completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

#### *G. How Are Sites Removed From the NPL?*

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

#### *H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

#### *I. What Is the Construction Completion List (CCL)?*

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup

levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at <http://www.epa.gov/superfund>.

## **II. Availability of Information to the Public**

### *A. May I Review the Documents Relevant to This Final Rule?*

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through <http://www.regulations.gov> (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

Site name	City/state	FDMS docket ID No.
Elm Street Ground Water Contamination .....	Terre Haute, IN .....	EPA-HQ-SFUND-2006-0755
Sonford Products .....	Flowood, MS .....	EPA-HQ-SFUND-2006-0758
Bandera Road Ground Water Plume .....	Leon Valley, TX .....	EPA-HQ-SFUND-2006-0760
East 67th Street Ground Water Plume .....	Odessa, TX .....	EPA-HQ-SFUND-2006-0761
Lockheed West Seattle .....	Seattle, WA .....	EPA-HQ-SFUND-2006-0762

### *B. What Documents Are Available for Review at the Headquarters Docket?*

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

### *C. What Documents Are Available for Review at the Regional Dockets?*

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes EPA's responses to comments.

### *D. How Do I Access the Documents?*

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for

the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3340, Washington, DC 20004, 202/566-1744.

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114-2023; 617/918-1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007-1866; 212/637-4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814-5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562-8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC-7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353-5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF-RA, Dallas, TX 75202-2733; 214/665-7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551-7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR-B, Denver, CO 80202-1129; 303/312-6463.

Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972-3097.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail

Stop ECL-115, Seattle, WA 98101; 206/553-2782.

#### E. How May I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at <http://www.epa.gov/superfund/> (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

### III. Contents of This Final Rule

#### A. Additions to the NPL

This final rule adds the following five sites to the NPL, all to the General Superfund Section:

State	Site name	City/county
IN	Elm Street Ground Water Contamination	Terre Haute.
MS	Sonford Products	Flowood.
TX	Bandera Road Ground Water Plume	Leon Valley.
TX	East 67th Street Ground Water Plume	Odessa.
WA	Lockheed West Seattle	Seattle.

#### B. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule and responses to comments are below.

EPA received comments from the Mayor of Leon Valley, Texas on behalf of the City Council. The comment letter included a Leon Valley City Council resolution requesting that the Bandera Road Ground Water Plume be added to the NPL in order to remediate the community's water contamination. For the reasons set forth in the Administrative Record for the site, EPA is adding this site to the NPL.

For the remainder of sites in this rule, EPA received no comments, therefore, EPA is placing them on the NPL at this time. All comments that were received by EPA are contained in the Headquarters Docket and are also listed in EPA's electronic public Docket and comment system at <http://www.regulations.gov>.

### IV. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

##### 1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely

to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

##### 2. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### B. Paperwork Reduction Act

##### 1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or

sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

##### 2. Does the Paperwork Reduction Act Apply to This Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.



An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

##### 1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

##### 2. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### D. Unfunded Mandates Reform Act

##### 1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA,

EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

##### 2. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might

significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding \$100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

#### E. Executive Order 13132: Federalism

##### What Is Executive Order 13132 and Is It Applicable to This Final Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

##### 1. What Is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

## 2. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

### G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

#### 1. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

#### 2. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

### H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

#### Is This Rule Subject to Executive Order 13211?

This rule is not a "significant energy action" as defined in Executive Order

13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

### I. National Technology Transfer and Advancement Act

#### 1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

#### 2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

### J. Congressional Review Act

#### 1. Has EPA Submitted This Rule to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### 2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of

CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

#### 3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington v. EPA*, 86 F.3d 1214, 1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 27, 2007.

Susan Parker Bodine,  
Assistant Administrator, Office of Solid Waste  
and Emergency Response.

■ 40 CFR part 300 is amended as follows:

#### PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

#### Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes <sup>(a)</sup>
IN	Elm Street Ground Water Contamination	Terre Haute.	.
MS	Sonford Products	Flowood.	.
TX	Bandera Road Ground Water Plume	Leon Valley.	.
TX	East 67th Street Ground Water Plume	Odessa.	.
WA	Lockheed West Seattle	Seattle.	.

<sup>(a)</sup> A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be  $\geq 28.50$ ).

C = Sites on Construction Completion list.

S = State top priority (HRS score need not be  $\geq 28.50$ )

P = Sites with partial deletion(s).

[FR Doc. E7–3908 Filed 3–6–07; 8:45 am]  
BILLING CODE 6560–60–P

#### GENERAL SERVICES ADMINISTRATION

##### 41 CFR Part 102–35

[FMR Amendment 2007–01; FMR Case 2004–102–1; Docket 2007–001; Sequence 3]

RIN 3090–AH93

#### Federal Management Regulation; FMR Case 2004–102–1, Disposition of Personal Property

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration is amending the Federal

Management Regulation (FMR) by revising coverage on personal property and moving it into subchapter B of the FMR. This final rule adds a new part to subchapter B of the FMR to provide an overview of the property disposal regulation and provide definitions for terms found in the FMR parts.

**DATES:** *Effective Date:* April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Holcombe, Office of Governmentwide Policy, Personal Property Management Policy, at (202) 501–3828, or e-mail at [robert.holcombe@gsa.gov](mailto:robert.holcombe@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FMR Amendment 2007–01, FMR Case 2004–102–1.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

A proposed rule was published in the **Federal Register** on September 12, 2006 (71 FR 53646) soliciting comments on proposed changes to 41 CFR part 102–35. The due date for comments was extended in a **Federal Register** proposed rule document on October 18, 2006 (71 FR 61445). Comments were received from three respondents relating to the sale of personal property. These comments do not directly address any provisions contained in this final rule, and will be held for consideration when the regulation covering the sale of Federal personal property assets, Federal Management Regulation (FMR) part 102–38, is released for comment. FMR part 102–38 is currently being reviewed within GSA for revisions.

This final rule adds a new part, 102–35, to subchapter B of the FMR to provide an overview of the property disposal regulation and to provide

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA-HQ-SFUND-2006-0755, EPA-HQ-SFUND-2006-0758, EPA-HQ-SFUND-2006-0760, EPA-HQ-SFUND-2006-0761, EPA-HQ-SFUND-2006-0762; FRL-8283-7]

RIN 2050-AD75

### National Priorities List, Final Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds five sites to the General Superfund Section of the NPL.

**EFFECTIVE DATE:** The effective date for this amendment to the NCP is April 6, 2007.

**ADDRESSES:** For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, "Availability of Information to the Public" in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Terry Jeng, phone (703) 603-8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204P); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

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#### I. Background

##### A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99-499, 100 Stat. 1613 *et seq.*

##### B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

##### C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section

105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. EPA's role is less extensive than at other sites.

#### *D. How Are Sites Listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutant or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated

by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

#### *E. What Happens to Sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions \* \* \*," 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

#### *F. Does the NPL Define the Boundaries of Sites?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue.

That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a Remedial Investigation/Feasibility Study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are

completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

#### *G. How Are Sites Removed From the NPL?*

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

#### *H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

#### *I. What Is the Construction Completion List (CCL)?*

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup

levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at <http://www.epa.gov/superfund>.

## **II. Availability of Information to the Public**

#### *A. May I Review the Documents Relevant to This Final Rule?*

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through <http://www.regulations.gov> (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

Site name	City/state	FDMS docket ID No.
Elm Street Ground Water Contamination .....	Terre Haute, IN .....	EPA-HQ-SFUND-2006-0755
Sonford Products .....	Flowood, MS .....	EPA-HQ-SFUND-2006-0758
Bandera Road Ground Water Plume .....	Leon Valley, TX .....	EPA-HQ-SFUND-2006-0760
East 67th Street Ground Water Plume .....	Odessa, TX .....	EPA-HQ-SFUND-2006-0761
Lockheed West Seattle .....	Seattle, WA .....	EPA-HQ-SFUND-2006-0762

#### *B. What Documents Are Available for Review at the Headquarters Docket?*

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

#### *C. What Documents Are Available for Review at the Regional Dockets?*

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes EPA's responses to comments.

#### *D. How Do I Access the Documents?*

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for

the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3340, Washington, DC 20004, 202/566-1744.

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114-2023; 617/918-1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007-1866; 212/637-4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814-5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562-8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC-7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353-5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF-RA, Dallas, TX 75202-2733; 214/665-7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551-7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR-B, Denver, CO 80202-1129; 303/312-6463.

Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972-3097.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail

Stop ECL-115, Seattle, WA 98101; 206/553-2782.

#### *E. How May I Obtain a Current List of NPL Sites?*

You may obtain a current list of NPL sites via the Internet at <http://www.epa.gov/superfund/> (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

### **III. Contents of This Final Rule**

#### *A. Additions to the NPL*

This final rule adds the following five sites to the NPL, all to the General Superfund Section:

State	Site name	City/county
IN	Elm Street Ground Water Contamination	Terre Haute.
MS	Sonford Products	Flowood.
TX	Bandera Road Ground Water Plume	Leon Valley.
TX	East 67th Street Ground Water Plume	Odessa.
WA	Lockheed West Seattle	Seattle.

#### *B. What Did EPA Do With the Public Comments It Received?*

EPA reviewed all comments received on the sites in this rule and responses to comments are below.

EPA received comments from the Mayor of Leon Valley, Texas on behalf of the City Council. The comment letter included a Leon Valley City Council resolution requesting that the Bandera Road Ground Water Plume be added to the NPL in order to remediate the community's water contamination. For the reasons set forth in the Administrative Record for the site, EPA is adding this site to the NPL.

For the remainder of sites in this rule, EPA received no comments, therefore, EPA is placing them on the NPL at this time. All comments that were received by EPA are contained in the Headquarters Docket and are also listed in EPA's electronic public Docket and comment system at <http://www.regulations.gov>.

### **IV. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review*

##### **1. What Is Executive Order 12866?**

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely

to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

##### **2. Is This Final Rule Subject to Executive Order 12866 Review?**

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### *B. Paperwork Reduction Act*

##### **1. What Is the Paperwork Reduction Act?**

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or

sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

##### **2. Does the Paperwork Reduction Act Apply to This Final Rule?**

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.



An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

#### 1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

#### 2. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

### D. Unfunded Mandates Reform Act

#### 1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA,

EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

#### 2. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might

significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding \$100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

### E. Executive Order 13132: Federalism

#### What Is Executive Order 13132 and Is It Applicable to This Final Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

#### 1. What Is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of



regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

## 2. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

## G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

### 1. What Is Executive Order 13045?

*Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks"* (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

### 2. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

## H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

### Is This Rule Subject to Executive Order 13211?

This rule is not a "significant energy action" as defined in Executive Order

13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

## I. National Technology Transfer and Advancement Act

### 1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

### 2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

## J. Congressional Review Act

### 1. Has EPA Submitted This Rule to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A "major rule" cannot take effect until 60 days after it is published in the *Federal Register*. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### 2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of

CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

### 3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington v. EPA*, 86 F.3d 1214, 1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 27, 2007.

**Susan Parker Bodine,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

■ 40 CFR part 300 is amended as follows:

#### PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

#### Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes <sup>(a)</sup>
IN	Elm Street Ground Water Contamination	Terre Haute.	
MS	Sonford Products	Flowood.	
TX	Bandera Road Ground Water Plume	Leon Valley.	
TX	East 67th Street Ground Water Plume	Odessa.	
WA	Lockheed West Seattle	Seattle.	

<sup>(a)</sup> A = Based on Issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be  $\geq 28.50$ ).

C = Sites on Construction Completion list.

S = State top priority (HRS score need not be  $\geq 28.50$ )

P = Sites with partial deletion(s).

[FR Doc. E7-3908 Filed 3-6-07; 8:45 am]  
BILLING CODE 6580-50-P

#### GENERAL SERVICES ADMINISTRATION

##### 41 CFR Part 102-35

[FMR Amendment 2007-01; FMR Case 2004-102-1; Docket 2007-001; Sequence 3]

RIN 3090-AH93

#### Federal Management Regulation; FMR Case 2004-102-1, Disposition of Personal Property

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration is amending the Federal

Management Regulation (FMR) by revising coverage on personal property and moving it into subchapter B of the FMR. This final rule adds a new part to subchapter B of the FMR to provide an overview of the property disposal regulation and provide definitions for terms found in the FMR parts.

**DATES:** *Effective Date:* April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Holcombe, Office of Governmentwide Policy, Personal Property Management Policy, at (202) 501-3828, or e-mail at [robert.holcombe@gsa.gov](mailto:robert.holcombe@gsa.gov) for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FMR Amendment 2007-01, FMR Case 2004-102-1.

#### SUPPLEMENTARY INFORMATION:

#### A. Background

A proposed rule was published in the **Federal Register** on September 12, 2006 (71 FR 53646) soliciting comments on proposed changes to 41 CFR part 102-35. The due date for comments was extended in a **Federal Register** proposed rule document on October 18, 2006 (71 FR 61445). Comments were received from three respondents relating to the sale of personal property. These comments do not directly address any provisions contained in this final rule, and will be held for consideration when the regulation covering the sale of Federal personal property assets, Federal Management Regulation (FMR) part 102-38, is released for comment. FMR part 102-38 is currently being reviewed within GSA for revisions.

This final rule adds a new part, 102-35, to subchapter B of the FMR to provide an overview of the property disposal regulation and to provide



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